Nos. 226, 227, 243, 266.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 226.

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

CENTRAL-ILLINOIS SECURITIES CORPORATION, C. A. JOHNSON, LUCILLE WHITE and FRANCES BOEHM.

No. 227.

THOMAS W. STREETER, *et al.*,
Petitioners,

v.

CENTRAL-ILLINOIS SECURITIES CORPORATION, C. A. JOHNSON, LUCILLE WHITE and FRANCES BOEHM.

No. 243.

THE HOME INSURANCE COMPANY and TRADESMENS NATIONAL BANK AND TRUST COMPANY,
Petitioners,

v.

CENTRAL-ILLINOIS SECURITIES CORPORATION, C. A. JOHNSON, LUCILLE WHITE and FRANCES BOEHM.

No. 266.

CENTRAL-ILLINOIS SECURITIES CORPORATION and CHRISTIAN A. JOHNSON,
Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION, THOMAS W. STREETER, *et al.*, HOME INSURANCE COMPANY, *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

REPLY BRIEF OF THOMAS W. STREETER, *ET AL.* TO ANSWERING BRIEF OF CENTRAL-ILLINOIS SECURITIES CORP., *ET AL.* AND BRIEF FOR LUCILLE WHITE, *ET AL.*

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Preliminary.

This Brief[1] is devoted to replying to the various contentions raised in the Answering Brief of Central-Illinois Securities Corp., *et al.*, and in the Brief for

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[1] The first Brief for Thomas W. Streeter, *et al.* and the Answering Brief of Thomas W. Streeter, *et al.* to Brief of Central-Illinois Securities Corp., *et al.* are hereinafter called the "Streeter Brief" and the "Streeter Answering Brief", respectively.

Lucille White, *et al.*[2] (hereinafter called "Central-Illinois" and "White", respectively).

I. Concerning the Contentions as to the Decision of the Common Stock Management to Eliminate the Preferred.

Despite the various Central-Illinois assertions[3] it cannot be denied that no 11(b) order was ever entered against Engineers directing its liquidation. Furthermore, the record establishes that the common stock management had a primary objective of retaining the underlying companies for the common stockholders and that a persistent effort was made to eliminate the preferred at $100 and to preclude their participation in any form whatsoever in the underlying operating companies.[4] These facts find their support in the following excerpts from the record:

[Cross-examination of D. C. Barnes, President of Engineers]

"* * * They have always felt that such a plan should preserve, as far as possible, the interests of the common stockholders in the companies in which they chose to invest, leaving to them the decision as to when and if they should sell their interest" (R. 627a).

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[2] Answering Brief of Central-Illinois Securities Corp., *et al.*, and Brief for Lucille White, *et al.*, are hereinafter referred to as "Central-Illinois Answering Brief" and "White Brief", respectively.

[3] Central-Illinois Answering Brief, p. 3 ff.

[4] See excerpts from record quoted in Streeter Answering Brief, pp. 14 and 32-33 (R. 733a, R. 745a-846a, respectively). Also see R. 583a.

"Q. Mr. Benjamin testified that one of the principal factors considered by the Board of Directors in formulating the present plan was that the present Engineers common stockholders want to continue their interest in the three operating companies, namely Gulf, El Paso, and Virginia. Do you recall his testimony? A. Yes, I do recall his testimony.

Q. And I take it that is your opinion? A. I have so testified this morning" (R. 643a).

[Cross-examination of R. N. Benjamin, Secretary of Engineers]

"Q. Is it fair to state that the dominant principle that guided the Board in its decisions with respect to its several plans—and I do not mean formal plans, but considerations of plans—was to preserve for the common stockholders the equities in the going concerns that would be left if, as and when it became necessary to dispose of Engineers?

* * * *

"The Witness: I think that is correct" (R. 687a).

* * * *

"Q. Now, for the purpose of the record is it fair to state that in principle the one-stock plan, the package plan, and the partial exchange plan are more or less variations of the same concept of giving the preferred stock a stake in the continuing enterprise in one form or another? A. I think that is true.

[These and other plans were discarded by Engineers management because each might give the preferred a continuing interest. This is clear from the following testimony.]

The Examiner: I gather from your testimony,

Mr. Benjamin, that it was the idea of the management and of the Board as well that the preferred stock should be retired rather than treated otherwise. Is that the substance of your testimony?

The Witness: That is correct" (R. 719a).

* * * *

"A. * * *

I think that all of the plans that the Board has shown a desire to follow contemplates the retirement of the preferred stock at $100 per share and the distribution to the common stockholders of the underlying common stocks" (R. 723a).

* * * *

"Q. Didn't you say that the record of activities on the part of the management of Engineers suggests a rather persistent effort during the last four years to get rid of the preferred stock in this situation? A. Yes."

* * * *

"Q. * * * Do you recall any thought of ever paying the preferred stockholders anything in excess of $100? A. No" (R. 733a).

* * * *

"Q. You testified several times with respect to an essential objective of the Board of Engineers to retain for the common stockholders their interest in the three companies, the operating companies. Do you recall giving that testimony in general? A. Yes, I do" (R. 819a).

It is equally true that the common stock management could have elected to merge Engineers with Virginia, an alternative which the original plan filed

in September, 1945, contemplated.[5] Had such merger method been followed, the Central-Illinois contentions that the involuntary liquidation provisions of the charter govern and that the *Otis* case is inapplicable, because of an alleged termination of the enterprise, could not have been asserted. The selection of the method of system adjustment, whatever form it may take, must not as this Court has stated in the *Otis* case, affect the rights of stockholders.[6] Consequently the common stock management's effort to curtail the rights of the preferreds is unavailing, for its conscious choice cannot make operative the involuntary liquidation provisions of the charter.

Furthermore, the efforts of Central-Illinois to suggest that in reality, it would have been more to the financial advantage of the common who own preferred to take the "premium" is completely baseless. This contention merely further emphasizes the partiality of the plan toward the common stockholders. The special status enjoyed by the select group of common stockholders also possessing preferred stock, is evidenced in the various calculations made by Central-Illinois in an effort to demonstrate that this select group would have fared better by the payment to the preferred, of the amounts in excess of $100.[7] This supposed "self sacrifice" on the part of the select preferred-common stockholders does not bear scrutiny. It would appear from the Central-Illinois calculation that whether the preferred are limited to $100 or found to be entitled to the amounts in excess thereof equivalent to the redemption price, the select pre-

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[5] See Streeter Brief, pp. 10-11.

[6] See Streeter Answering Brief, p. 30 ff.

[7] Central-Illinois Answering Brief, p. 18, n. 2.

ferred-common stockholder group[8] (with their co-common stockholders) obtain the same measure of control and ownership of the three underlying companies. In addition, while it is suggested that the premium cost, as characterized by Central-Illinois, is $1.70 per share of common stock, and that it would have been more advantageous to the select group of preferred stockholders (holding common) to take the premium, we submit that the argument is completely fallacious for two reasons: (1) that should the preferred stockholders prevail in the instant litigation, the select group of preferred-common stockholders will still get the amounts in excess of $100; and (2) that the cost of $1.70 per share for the common stockholders to eliminate the preferred stock from this entire enterprise would appear to be a very nominal sum for the achievement of the advantages, which are so obvious to the common stockholders under the instant plan.

II. Concerning the Contentions as to the Various So-called Colloquial Equities and Other Erroneous Criteria.

We have already demonstrated the lack of factual and legal basis for any special consideration to be given to such factors as (a) issue price and market history, (b) retention of earnings and (c) alleged losses from divestments.[9] Therefore, we shall point out certain erroneous legal conclusions and misstatements of fact.

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[8] This same group of select preferred-common stockholders also received special privileges in connection with the Gulf States warrant program whereby they were permitted to acquire warrants using the preferred stock as payment if they wished (R. 119a). Such privilege was not afforded any other preferred stockholder, who was forced out and denied the opportunity to participate.

[9] Streeter Brief, p. 113 ff.

A. "Retained Earnings."

As we have already shown the absence of merit in the contention based upon the alleged colloquial equity arising from "retained earnings", we will only devote our attention to the Central-Illinois effort to analogize the instant situation to a claim of "double interest",[10] as involved in *Vanston Bondholders Protective Committee* v. *Green*, 329 U. S. 156, 165-7 (1946). In the *Vanston* case, a Kentucky District Court appointed an equity receiver for a debtor corporation and took custody of its assets and enjoined the payment of its debts. Thereafter interest fell due on the mortgage bonds which the debtor did not pay and the court did not direct the payment. The indenture trustee under the terms of the indenture declared the principal due and payable despite the assumption of custody of the estate by the federal court. Then the proceeding moved from an equity receivership through section 77B to Chapter X in the wake of statutory changes. The indenture provided for payment of interest on unpaid interest. The debtor was insolvent but had sufficient assets to pay the mortgage bond creditor in full including interest upon interest, but the payment of interest upon interest would have resulted in a greatly reduced share for "subordinate creditors" in the reorganized corporation. Under these circumstances this Court found it inequitable to pay interest upon interest.

That situation is far removed from the instant case. First, no double interest is involved. The assumption of Central-Illinois of the alleged "transfer of value" from the common to the preferred is baseless. The

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[10] Central-Illinois Answering Brief, p. 34.

Commission has found the preferred entitled to a principal sum equal at least to the call prices, which Central-Illinois erroneously persists in characterizing as premiums. Obviously a principal right is not "interest". Second, much of the so-called accumulation of earnings in the Engineers system, which was motivated by tax and other reasons and added to the value of the common, did not accrue while Engineers was in "*custodia legis.*" Third, in the instant case, Engineers, as contrasted with the debtor in the *Vanston* case, has ample assets to pay the entire going concern value of the preferred without any reduction in payment. Engineers is free from debt and clearly solvent. Furthermore, even in the *Vanston* case, this Court recognized the fact that the rule would be different in a solvency situation; when, in a passage, preceding the quotation from the *Vanston* case appearing in the Central-Illinois Brief, this Court said:

> "* * * But where an estate was ample to pay all creditors and to pay interest even after the petition was filed, equitable considerations were invoked to permit payment of this additional interest to the secured creditor rather than to the debtor" (329 U. S. 164).

In effect, the *Vanston* case not only does not support the Central-Illinois contention, but sustains the claim of the preferred to the dividends that were prematurely cut off by District Court consummation of the plan, while the common litigated the payment of the full amount of the going concern value of the preferred.[11]

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[11] Streeter Brief, p. 147 ff.

B. Alleged Puget Sound Loss.

Central-Illinois and White have urged[12] that the alleged Puget Sound loss was occasioned by the Act. At several points, we have demonstrated the fallacy of this contention both legally and factually.[13] Moreover, we have already pointed out that the so-called "formal offer of proof" of present cash value of Puget Sound at $10,000,000 finds no basis in the record,[14] that no real pressure in making the divestment resulted from the statutory requirement of compliance;[15] that the rule of concurrent findings enunciated in the *Comstock*[16] case does not control in the instant situation[17] for various reasons, including the fact that such finding is not supported by the evidence in the record.[18]

The history of Puget establishes the fact that this investment was a fiasco from the outset and that this so-called "book" loss cannot be fairly attributed to

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[12] Central-Illinois Answering Brief, p. 39 ff.; White Brief, p. 36.

[13] Streeter Brief, p. 113, p. 120 ff.; Streeter Answering Brief, p. 16 ff.

[14] White counsel joins Central-Illinois in asserting on the basis of District Court finding No. 37 (R. 307a) that a "formal offer of proof was made before the Court to establish that the equity owned by Engineers in Puget Sound would presently have a cash value of $10,000,000" (White Brief, p. 36; Central-Illinois Answering Brief, p. 40). As previously indicated, we find no basis in the record for the Central-Illinois and White assertions nor for the statement in the District Court finding (Streeter Answering Brief, pp. 12-13). The District Court had no authority to make findings on material not in the record and subject to cross-examination. *Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793 (1945); see *U. S.* v. *Abilene & So. Ry. Co.*, 265 U. S. 274, 288 (1924). It is interesting to note that White counsel points out in another connection: "No new proof was submitted by the common stockholders or considered by the Court" (White Brief, p. 16).

[15] Streeter Answering Brief, pp. 15-16.

[16] *Comstock* v. *Institutional Investors*, 335 U. S. 121 (1948).

[17] Streeter Answering Brief, p. 84, n. 117, p. 85.

[18] The Commission expressly refused to accept the hypothesis that this "book" loss was occasioned by the Act (R. 72a, n. 55).

the operation of the Act. In the interim between its acquisition in 1928 and 1938, various troubles beset Puget Sound—a drop in earnings in 1929 (R. 1673a, 1676a); unfavorable business conditions in 1930-1932 and the appearance of the threat of public competition (R. 1688a-1690a, 1702a-1703a, 1713a-1714a); new taxes and the approval of Grand Coulee and Bonneville projects in 1933 (R. 1435a); dividends not paid in 1934 (R. 1443a); business conditions in area of service subnormal in 1935 (R. 1448a); failure to earn dividends in 1935 to 1938 (R. 1469a, 1480a, 1500a, 1515a), the completion of one federal power project and anticipated completion of the other by 1942, and the creation or enlargement of public power districts for acquiring portions of private systems. (R. 1505a).

Finally, in 1938, Engineers recognized the true condition of Puget Sound, by providing a reserve of $35,000,000 for depreciation in investments, embodying a substantial allowance for Puget (R. 1516a). The following excerpts from the Engineers Annual Report for 1938 adequately demonstrate the time of occurrence and cause of these so-called "book" losses:

> "The Company has made certain adjustments in its balance sheet as described more fully hereafter under 'Adjustment of Balance Sheet,' which included the *creation of a reserve for depreciation in investments in subsidiaries, embodying a substantial allowance for the Company's investment in the common stock of Puget Sound Power & Light Company.* Since this reserve has provided for a considerable period in advance, for losses which may be sustained because of the accrual of unearned cumulative dividends on the preferred stocks of the Puget Sound

subsidiary held by the public, it is unnecessary to deduct from current consolidated income the amount of the deficiency in earnings of this subsidiary. Accordingly, beginning with the January 1939 monthly report, the consolidated balance for the 12 months' period then ended applicable to stocks of Engineers Public Service Company is being set forth without deduction for such deficiency.

* * * *

"As of May 31, 1938 the Directors of the Company authorized certain adjustments in the balance sheet, as follows:

* * * *

"(3) The creation of a $35,000,000 reserve for depreciation in investments in subsidiaries by a transfer from capital surplus in this amount. *This reserve was established to provide for losses which the Directors believed to have accrued at that date although such losses had not yet been taken. The principal factors causing the depreciation against which this reserve was provided, were reduced net earnings brought about largely by increased taxes, existing competition and the announced intention of certain power districts and other public authorities either to purchase or condemn certain properties of subsidiaries of the Company or to compete with such subsidiaries. These factors are largely covered in subsequent sections of this letter*" (R. 1516a, 1517a-1518a). (Italics ours.)

The foregoing statement was made in the Engineers annual report one year after registration under the Act, and not one word of blame for this loss was laid at the door of the Act, although reference was made in the

original report to the Act (R. 1519a). Thus the Puget loss had already occurred by 1938, but was not taken until a later date. Puget's past accurately forecast a dismal future—poor earnings record (R. 1536a, 1537a, 1553a, 1571a); pendency of condemnation proceedings against Puget's property and negotiation for its transfer (R. 1540a-1541a; 1559a-1560a, 1577a-1578a, 1594a-1595a); growth in public competition (R. 1559a, 1595a); and increased taxes (R. 1559a).

The foregoing recital of facts by the Engineers Company itself strikingly establishes that the Puget failure cannot be attributed to the Act, but was occasioned before the Act and by forces totally unrelated thereto and existing entirely independently thereof. The sale of Puget in 1944 was but the unhappy ending of an ill-fated venture, which was clearly foreshadowed by the creation of the reserve in 1938 and finally resulted upon disposition in 1944 in a book loss of approximately $33,000,000, charged against the 1938 reserve (R. 1608a). The foregoing circumstances definitely support the Commission's refusal to accept the hypothesis urged by Engineers counsel that the Puget Sound loss was occasioned by the Act and further clearly demonstrate that the District Court Finding No. 37 is not supported by evidence in the record and consequently must be rejected.[19] Likewise the White and Central-Illinois contentions based thereon must equally fail for lack of support in the record. In any event, that sale of Puget brought in its wake several significant tax benefits, such as (a) the immediate income tax saving of $442,000 (R. 1608a) until the repeal of the Excess Profits Tax Law in December 1945, which would in the absence of a repeal, have resulted in annual savings

[19] Rule 52 (b) of the Federal Rules of Civil Procedure.

and (b) an offset against capital gains arising from the sale of El Paso Natural Gas stock and the profits from the sale of Gulf States stock and any future sale of Virginia common stock.[20]

III. Concerning the Contentions as to Alleged Valuation on the Basis of Haphazard Market Prices, and "Boom Conditions" (Abnormal Earnings) and Inaccurate Predictions of Future Earnings.

Central-Illinois persists in its attack upon the valuation made by the Commission and Dr. Badger as allegedly based upon momentary market prices (Brief, p. 22 ff.). In addition, Central-Illinois and White complain that the valuation rests upon "the high earnings of the war and immediate post-war period"[21] and upon "two years of abnormal earnings" during a war (1943-1944).[22] Central-Illinois refers us to its mass of unrelated statistical data and calculations derived from newspaper articles, financial publications, current market prices, occurring long after consummation of the plan, all of which this Court is asked to judicially notice, in an attempt to discredit both the Commission and Dr. Badger. Similarly, White requests this Court to "take judicial notice of the fact, that since January 1946 there has been a considerable decline in the market value of public utility company stocks (as well as of stocks generally) and that the price earnings ratio at which utility stocks are now valued, has declined considerably below the times earning ratio which existed in

[20] Streeter Answering Brief, pp. 24, 62-63.
[21] Central-Illinois Brief, p. 27.
[22] White Brief, p. 138.

January 1945."[23] At another point White refers to the advance in wages over and above the prediction of Barnes which was supposedly better than Badger's, and also states that it "is a matter of common knowledge, and this Court may take judicial notice of the fact, that while *gross* utility company earnings have increased since last year (owing to the present abnormally high rate of business activity), utility *net* earnings have decreased owing to the increases in labor costs, fuel and costs of replacement and repairs" and that at "the present time we are in the very midst of an acceleration of the 'inflationary spiral' * * * which are already adversely affecting utility company earnings."[24] White attacks Badger, as did Central-Illinois, for his prediction as to the continuance of low interest rates, making the general observation that it "is a matter of common knowledge and this Court may take judicial notice of the fact that interest rates since March 1947 down to the present time have steadily risen" (Brief, p. 41). It is thus apparent that both Central-Illinois and White have directed their attack upon Badger's valuation because of his alleged reliance upon "peak earnings" for a short period during the war or immediately thereafter and upon the continuance of low interest rates, the former by resort to a variety of so-called general financial data, calculations and comparisons and the latter by broad statements of a general character. The Central-Illinois and White objective for the inclusion of this mass of irrelevant data is not to support a request for remand, but to bolster the District Court's opinion on valuation and to discredit Badger's predictions. It is quite

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23 White Brief, p. 39.
24 White Brief, p. 49.

obvious that the Central-Illinois and White Briefs cannot serve as a substitute for a trial record, with an opportunity to examine and cross-examine. Moreover, reference to the Badger report clearly demonstrates that one of Badger's studies deals with earnings for a seven year period[25] (1940-1945) including the 1946 estimate (R. 2098a, 2102a) (about which we shall have more to say later) and is not solely based upon a two year period, as contended by Central-Illinois and White. Furthermore, in reply to the Central-Illinois and White charge as to the period used, we refer to the acute observation of Judge Kennedy in the *Kings County Lighting Co.* case,[26] when in answer to a contention that the standards applied by the Commission in measuring the fairness of a plan were not sound, from a long range point of view, Judge Kennedy pointed out:

> "* * * But it [the objector] goes further and says that on the score of *potential earnings the federal commission is far too optimistic.* To point up this contention, the Public Service Commission supplies *figures showing that at December 31, 1946, the financial* condition of Kings had deteriorated as against its April 30th condition. In this fact the state commission finds confirmation for its belief not only that potential earnings as a standard of distribution furnish a treacherous guide, but also that at the date of hearing the underlying facts now demonstrate conclusively that the plan is unfair and inequitable.

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[25] It should also be noted that the Commission considered the Engineers earnings for the period from 1937 to 1945 (R. 64a-65a).

[26] *In re Kings County Lighting Co.*, 72 F. Supp. 767 (E. D. N. Y., 1947), aff'd *sub nom. Public Service Commission of N. Y. v. S. E. C.*, 166 F. (2d) 784 (C. C. A. 2, 1948), cert. den., 334 U. S. 838 (1948).

"But if earnings are to be used as a principal standard of recapitalization, *it will always be true that some particular accounting period may yield the conclusion that the standard used is unreliable * * * a conclusion that may lose its validity if a longer accounting period is used.* At best, there can be no mathematical certitude but only an estimate of how the plan will work, as the cases say. To paraphrase the language of *Consolidated Rock Co.* v. *Du Bois, supra,* 312 U. S. 510, 526, so long as the esimate is based on an informed judgment embracing ~~all facts~~ relevant to future earning capacity, taking into consideration the *nature and condition of the properties,* the past earning record, and all circumstances indicating whether or not that record is a reliable criterion, the Securities and Exchange Commission has properly discharged its function. And it has done so here.

"There is ample support in the record to sustain the findings of the commission, and its conclusion that the proposed plan, as amended and modified, is fair and reasonable. And I also find that it is" (72 F. Supp. 783). (Italics ours.)

Besides, Central-Illinois and White take an even more untenable position in the instant case than did the Public Service Commission in the *Kings County Lighting Co.* case, for instead of supplying any recent figures as to the earnings of the three underlying companies, they advert to a wide variety of isolated statistical and financial data of a vague and general character.

Although we have strongly urged that such material is entirely irrelevant to the issues before the Court since both Central-Illinois and White have strenuously emphasized these subsequent events of a general nature, we have felt impelled to present this Court

with such facts as will demonstrate conclusively the fallacy and error of the Central-Illinois and White conclusions, based upon the data in their Briefs.

In order to answer these contentions and demonstrate their lack of factual basis, we have prepared data relating to economic conditions and money rates and to the actual status of the three operating companies which bring down to date a substantial portion of Dr. Badger's report (Pref. Exh. 29-A, R. 2088a) and are based upon matters of which this Court may wish to take judicial notice.[27] The data clearly demonstrate that Dr. Badger and the Commission were entirely correct and that their forecasts were not only amply justified by the events of the last three years, insofar as Virginia, Gulf States and El Paso were concerned, but also that the predictions of Dr. Badger were distinctly on the conservative side. In other words, as stated in the *Henwood* case, "What were then 'prospective' earnings * * * have now become actualities".[28]

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27. *Insurance Group Committee* v. *Denver & R. G. W. R. Co.*, 329 U. S. 607 (1947); *St. Louis Southwestern Ry. Co.* v. *Henwood*, 157 F. (2d) 337 (C. C. A. 8, 1946), cert. den. 330 U. S. 836 (1947); rehearing den. 331 U. S. 870.

28 In the *Henwood* case, *supra*, n. 27, the Court of Appeals made the following pertinent statement at page 395:

"The Commission had before it evidence of past earnings and past financial condition with voluminous evidence bearing thereon. The report shows that earnings up to and including at least the first six months of 1941 were before the Commission. Also, the prospective war earnings were urged upon the Commission and denied as a basis for the long time requirements of a reorganization valuation, although the United States had been in the war for three months when the Supplemental Report was filed.

"What were then 'prospective' earnings for the last half of 1941 to 1944, inclusive, have now become actualities. Tables showing (1917 to 1944, inclusive) gross operating revenues and net railway operating income and (1923 to

[Footnote continued on following page.]

For the sake of convenient presentation, we have divided the subject into the following five categories:

A. Economic Conditions and Money Rates—December 1948.

B. Earnings Analysis—Consolidated Basis.

C. Balance Sheet Analysis—Consolidated Basis.

D. Analysis of Operating Performance of Three Former Operating Subsidiaries of Engineers for 1946, 1947 and 1948 Covering the Three Year Period Subsequent to Badger's Valuation (Pref. Exh. 29-A, R. 2088a).

E. Comparison of Engineers Actual Earnings for 1946 and Pro Forma Earnings for 1947 and

[Footnote continued from preceding page.]

1944, inclusive) income available for fixed charges are in the footnote. While statistics of almost every kind are subject to explanations which sometimes vitally affect the worth of deductions from them, yet a series covering many successive years of a business are quite likely to reveal, on their face, significant matters. A long series furnishes fairly solid foundation for deductions as to normals, abnormals and averages. Since reorganization proceedings must have the long range in view, such deductions are valuable. The statistics in the footnote are long range experience of the Debtor. They reveal clearly the abnormal character of the years 1942, 1943 and 1944."

Paraphrasing the above quotation, the Commission in the instant case had before it the entire earnings record of Engineers as set forth in all of its annual statements from 1925 through 1944 (Engineers Exhibits 37-A to 37-T, inclusive, R. 1432a ff.). In addition, the Commission had before it estimated income of Engineers and subsidiaries for 1946 (Exhibit No. 63, R. 1829a). The "prospective earnings" have been brought right down to date. As the court said, prospective earnings have now become "actualities". The results of those last three years are set forth below. The conditions have been improving steadily, as Dr. Badger testified they would (R. 2103a). The last three years certainly reveal no abnormal character of income of Engineers and its subsidiaries for the period from 1940 to 1945. In short, the data below even further highlights the inherent equities of the preferred stockholders in the instant case.

for the Twelve Months Ended September 30, 1948 with the Earnings Estimate for 1946 of Engineers (Engineers Exh. 63, R. 1828a-1839a).

A. Economic Conditions and Money Rates—December, 1948.

Money market conditions and interest rates have not changed substantially since January 24, 1946. Although the Federal Reserve System has allowed the rate on one-year Certificates to increase from 7/8% to 1 1/4%, it is still maintaining the 2 1/2% rate on the long-term bank ineligible 2 1/2s. The effect of this policy has been to keep interest rates at the historically low levels prevailing at January, 1946. This is indicated by the tabulations set forth in the footnote.[29]

The tabulations below show that the yield on taxable United States Government securities has increased .24 basis points from 1946 through 1948. Likewise, high-grade corporate bonds, which are purchased and sold in an uncontrolled market, have increased by .29 basis points. This increase is slightly greater than the increase in yields on taxable Governments. As might be

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[29] YIELDS ON
UNITED STATES GOVERNMENT BONDS, HIGH-GRADE CORPORATE BONDS AND HIGH-GRADE PREFERRED STOCKS
1946-OCTOBER, 1948, INCLUSIVE.

	U. S. Governments (a)	Bonds (b)	Stocks (c)
	Taxable	High-Grade Corporate	High-Grade Preferred
1946	2.19%*	2.51%	3.53%
1947	2.24	2.58	3.79
1948 Thru Oct.	2.43	2.80	4.15

*Yield fluctuations governed by tax changes as well as by changes in money rates.

(a) Federal Reserve Bulletin, December 1948, p. 1499.

(b) Ibid.

(c) Ibid., p. 1500. Prices for high-grade preferred stocks as shown in this source converted into equivalent yields on basis of $7 annual dividend.

[Footnote continued on following page.]

expected; yields on high-grade preferred stocks have shown a greater increase, amounting to .62 basis points in the same period. The average yield of eleven high-grade municipal bonds has increased from 1.23% in 1946 to 2.14% in 1948, or .91 basis points. The increase in the yields of these classes of securities has been of modest proportions, and it may be concluded that interest rates currently still are at historically low levels.

It has been argued by Central-Illinois and White that the modest increase in the yields of these securities presages a fundamental increase in the level of interest rates. Events within the past month, however, have indicated that these past increases represent normal fluctuations and are not a forerunner of a fundamental change in money market conditions and long-term interest rates. A change of .29% in the average yield on uncontrolled high-grade, long-term corporate bonds over a two year period is indeed a very small change. Furthermore, the very modest tendency for yields to increase appears to be now

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[Footnote continued from preceding page.]

YIELDS ON

MUNICIPAL BONDS(d)

1946-NOVEMBER, 1948, INCLUSIVE

(Average of Yields on 11 High-Grade Municipal Bonds)*

1946		—	1.23%
1947		—	1.65
1948 (Nov.)		—	2.14
Nov.	4	—	2.22
"	10	—	2.18
"	18	—	2.14
"	24	—	2.12

(d) The Bond Buyer "The Bond Buyers Index of the Municipal Bond Market", November 27, 1948, p. 7. Annual yields are averages of monthly figures.

* Changes in yield affected in considerable part by lowering of tax rates, and hence change in value of tax exemption.

reversed. Since the election, United States Treasury bonds ineligible for purchase by banks, have been moving above their respective price support levels maintained by the Federal Reserve System. Confidence in the long-term Treasury 2½% rate has been greatly increased, which may well indicate that yields of strictly high-grade corporate issues have now reached their maximum spread from yields on Government bonds. In the first week following the presidential election the Reserve Banks purchased only $85.9 million of Treasuries maturing in five years or longer.[30] In the week ended December 1, 1948, the Federal Reserve System purchased only $7 million of bonds with maturities of five years or over.[31] This contrasts with the average weekly purchase of $363 million in the period from about mid-September to the election when confidence in the 2½% rate was clearly declining.[32] These reduced purchases of long-term Treasuries by the Federal Reserve System are indicative of the revived confidence of the investors in the present level of interest rates.

Current conditions in the corporate bond market also reflect this revived confidence by the investing public. Thus, Moody's Aaa bond yields stabilized at a yield of 2.82% for the week ended November 19, 1948, down from 2.87% on October 30.[33] As of November 23, 1948, the average yield on Standard Statistics high-grade preferred stocks was 4.15%, down from 4.28% in October.[34] The average yield of eleven bonds used in the index of municipal bonds declined from 2.22% on November 4, to 2.12% as of November

[30] Moody's Bond Survey, Nov. 15, 1948, p. 159.

[31] Moody's Bond Survey, Dec. 6, 1948, p. 125.

[32] Moody's Bond Survey, Nov. 15, 1948, p. 159.

[33] Moody's Bond Survey, Nov. 8, 1948, p. 182 and Nov. 22, 1948, p. 136.

[34] Federal Reserve Bulletin, December 1948, p. 1500.

24, 1948, and has since declined further. It is true, of course, that the recent decline in municipal bond yields may be partly attributed to the recent heavy demand arising from current fears regarding increases in Federal Income Taxes.

Statements by responsible officials of the Treasury Department and the Federal Reserve System indicate that there is no intention in the foreseeable future to lower the support levels on the long-term Treasury bonds. Thus, Mr. Thomas B. McCabe, Chairman of the Board of Governors of the Federal Reserve System, speaking before the annual stockholders meeting of the Federal Reserve Bank of Boston, on October 26, 1948, stated: "When you consider that the public debt is one and a half times all other debt in the country combined, it seems obvious to me that the market for the Government debt securities must be one where investors can deal at all times with confidence. I remain of the conviction that for the foreseeable future the support program should be continued. This conviction is shared by all members of the Board of Governors, the members of the Federal Open Market Committee, and by the Treasury. It is also supported by the weight of financial opinion in the country".[35]

It is well known that financing through common stock equity since the 1946 stock market break has been small and costly, and therefore the pressure on senior financing has been accentuated. Practically any series of figures which one might care to use would show that new construction, plant expansion, etc. have been at maximum levels and that there is every reason to feel that from this point forward some

[35] The Commercial and Financial Chronicle, November 4, 1948, p. 40.

slackening in capital requirements may be witnessed. This would, therefore, tend to moderate the demand for new money, making for firm bond and preferred stock prices.

It may be said in summary that although interest rates and preferred stock yields have shown minor increases since the date of Dr. Badger's valuation, such increases are not indicative of any fundamental change in the general level and structure of interest rates and preferred stock yields. In fact, confidence has revived among the investing public since the election with respect to the continuance of present support prices on long-term Federal obligations. With the present administration committed to a high level of spending for operating expenses, farm crop supports, housing, re-armament, veteran's benefits, and European aid—all of which will probably require expenditures approximating $45 billion in fiscal 1950—it is quite possible that the Treasury Department may resort to deficit financing in the foreseeable future. To finance these deficits successfully, the Government must maintain stable market conditions for its securities. Because such confidence is predicated upon maintaining the existing support prices on long-term Government bonds, it is highly improbable that the general level of interest rates will increase further. In fact, it is quite possible that in the near future interest rates and preferred stock yields will recede from present levels. Dr. Badger's predictions of early 1946 that there was no indication of a fundamental change in respect to money rates seems to still stand.

B. Earnings Analysis—Consolidated Basis.

In analyzing the earnings record of Engineers subsequent to 1946, assumptions must be made regarding the character of its assets and the extent of its operations. In 1947 the Company divested itself of its 100% holdings of the common stock of El Paso Electric Company and Gulf States Utilities Company, and all but 162,612 shares of Virginia Electric & Power Company stocks.[36] Proceeds from the sale of the Gulf States stock, as well as other funds of the Company, have been used to pay $100 per share to each of the various classes of preferred stock. Therefore, in order to determine the current earnings available for dividends on Engineers Preferred, it is necessary to reconstruct pro forma income accounts for 1947 and 1948 on the assumption that the Parent Company had retained its investment in its former subsidiaries.

An income account analysis, on a consolidated basis, for Engineers for the period 1940-1946 has been prepared as Table 1, and is ~~set forth in~~ Appendix A, *infra*.

Analysis of the data in that table indicates that in the year 1946 the company experienced an improvement in earnings over 1945. Thus, total charges and preferred dividends of the consolidated companies were earned 1.85 times as contrasted to 1.51 times in 1945, and 1.54 times in 1944. This was accomplished in spite of an increase in the operating ratio from 61.30% in 1945, to 66.28% in 1946. The proportion of maintenance and depreciation expense to total operating revenues for 1946 was 14.9%, as contrasted

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36 See Moody's Public Utility Manual 1947, p. 1295, and 1948, p. 403.

to 14.3% in 1945, and 14.8% in 1944. Dr. Badger's testimony was predicated on the continuance of earnings on a basis at least as favorable as that of 1945. As a matter of fact, earnings actually *improved* substantially.

We have also set forth in Tables 2 and 3 (Appendix B and C, *infra*) an analysis of income account, on a pro forma basis, of Engineers and its former subsidiaries, Virginia, Gulf States and El Paso, for the year ended December 31, 1947, and for the 12 months ended September 30, 1948. In that consolidation it has been necessary to make assumptions regarding the operating expenses of the Parent Company. In order to reflect higher wage and material costs in 1947 and 1948, 1946 operating expenses were increased by 20% to obtain the 1947 estimate, and by 30% to obtain the estimate for the twelve months ended September 30, 1948. Such adjustments as have been made are minor and any error in these computations would exert no appreciable influence on any final figure.

Analysis of the pro forma statements indicates that the showing for 1946 was bettered in 1947 and equalled the twelve months ended September 30, 1948. Thus, all charges and preferred dividends were earned 2.01 times in 1947 and were earned 1.81 times in the twelve months ended September 30, 1948. The operating ratio in 1947 was 69.30% and for the twelve months ended September 30, 1948, was 73.16%. However, the increase in the operating ratio is not peculiar to the Engineers group, but reflects a condition existing throughout the public utility industry. It should be pointed out, however, that as new, efficient plants are placed in operation the operating ratio should decrease. Thus as previously mentioned in our

Answering Brief on page 9 of the Prospectus of Virginia Electric and Power Company, dated November 15, 1948 filed with SEC, it is estimated that savings amounting to $1.5 million would have been realized had the new 60,000 kw Possum Point power station been in operation for the twelve months ended September 30, 1948. This plant was scheduled to begin operation in December, 1948.

There has also been prepared and set forth in Table 4 (Appendix D, *infra*) an analysis of income data relative to Engineers for the years ended December 31, 1946 and 1947, and for the twelve months ended September 30, 1948, showing the times Parent Company preferred dividends earned. Data for the year 1947 and for the twelve months ended September 30, 1948, are based on the pro forma consolidations made in the preceding tabulations. It should be pointed out that the caption "Balance of Subsidiaries Earnings Applicable to Parent Company" represents the total earnings available to the common stocks of the subsidiary companies and includes not only earnings paid out as dividends but also the retained earnings of subsidiaries.

The data in Table 4 indicate improvement in respect to times Parent Company preferred dividends earned. In 1946 preferred stock dividends were earned 3.75 times, and in 1947 such dividends were earned 4.40 times. For the twelve months ended September 30, 1948, preferred stock dividends were earned 3.95 times.

On the basis of the above facts, it is clear that the earnings record of Engineers and its operating subsidiaries has *exceeded substantially* the improvement anticipated at the time of Dr. Badger's valuation. Consideration must be given to the growth in the

revenues of the operating companies which, without exception, are characterized by rapid expansion. The earnings record per the pro forma consolidated earnings statement for the twelve months ended September 30, 1948, shows a slight decrease from that shown in 1947. It is evident from an analysis of the consolidated statements that such decline as did occur was attributable to Virginia which reduction was largely offset by increased earnings of the other subsidiaries. It is apparent in the case of Virginia that such decrease is temporary and will be offset as and when new plants and equipment are placed in operation. The facts indicating the foregoing appear in the Prospectus of Virginia dated November 15, the Registration Statement of Gulf States filed January 1949, and the application of El Paso to the Federal Power Commission to sell notes in the amount of $1,500,000 dated November 18, 1948, and filed November 23, 1948, which are discussed below in "D", *infra*, page 30 ff.

C. Balance Sheet Analysis—Consolidated Basis.

The consolidated balance sheet data for Engineers and subsidiaries, for the years 1942-1946, inclusive, have been set forth in Table 5 (Appendix E).

At December 31, 1946, Engineers showed a book value of equity per share of preferred stock of $252.10, which represents a substantial increase from the amount shown for 1944, namely $192.51. In 1946 preferred stock and subordinate items of the Parent Company constituted 40.99%, of the total capitalization of the consolidated balance sheet, and 39.50% in 1945, a significant improvement over the figure of 31.74% for 1944. Also, the per cent of net quick assets to total prior obligations was 16.56%, in 1946, and

16.78% in 1945, as contrasted to 10.55% for 1944. The improvement of the ratio of equity to total is largely the result of the favorable earnings record of Engineers (subsidiaries) since Dr. Badger's valuation in January 1946.

There has also been prepared a pro forma consolidated balance sheet of Engineers with its operating subsidiaries as of December 31, 1947 which is contained in Table 6 (Appendix F, *infra*). It was not possible to effect this consolidation by using orthodox accounting methods as there was not available certain information regarding the basis and the amount of certain inter-company eliminations, particularly those relating to consolidated earned surplus and consolidated capital surplus. It was, therefore, necessary to take the consolidated balance sheet items as of December 31, 1946 (see Table 5, Appendix E, *infra*), and indicate the changes which had taken place with respect to each of these items during the year 1947 for each subsidiary and for the Parent Company, thereby deriving the pro forma figures for December 31, 1947. The method of computation and the results are shown in this tabulation.

The data in Table 6 (Appendix F, *infra*) further substantiate the conclusions reached in the preceding table to the effect that the financial picture of Engineers, on a pro forma basis, has shown material improvement since Dr. Badger's valuation. Although the proportion of equity to total capital has not changed from the 1947 figure, book value of equity per share of preferred stood in the amount of $270.34 in 1947, a sizeable increase from the $252.10 shown for 1946 (see Table 5, Appendix E, *infra*). Moreover, the per cent of net quick assets to prior

obligations had declined to only 12.03%, in spite of the large construction programs which the operating companies were currently undertaking.

Another computation has been made in respect to the corporate balance sheet of Engineers, in which study a calculation is made of the value of preferred stock of Engineers on the basis of the market prices of the common stocks of its former operating subsidiaries. In making this computation it was necessary to use the balance sheet of the Parent Company as of December 31, 1946, and to add thereto estimated retained cash income for the years 1947 and 1948, after adjustment, to reflect the pro forma subscription in 1948 to the common stock issues of Gulf States and subscription to the convertible debentures issue of Virginia. The results of this analysis are shown in Table 6A, set forth in Appendix F.

On the basis of market prices of the common stock of the operating subsidiaries for the week ending November 22, 1948, and the price of the convertible preferred at November 26, 1948, the assets per share of preferred stock of Engineers stood in the amount of $279.22, which contrasts with the figure of $270.34 book value per share of preferred at December 31, 1947. The value of $279.22 exceeds the value which Dr. Badger found by making a similar computation in his valuation, which value then stood at $265.68. It should be pointed out, however, that the market price of the common stock of Virginia Electric & Power Company is currently depressed because of the recent issuance of 739,128 shares of new common stock at a subscription price of $14.25 per share.

In conclusion, it may be said that an analysis of data subsequent to the date of Dr. Badger's valuation indicates that from an asset standpoint the preferred

stock of Engineers has shown a decided improvement. This improvement has been indicated by an increase in the proportion of consolidated equity to consolidated total capital, by the increase in the book value per share of the preferred stock, and by an increase in the market value of assets per share of preferred stock. In view of this favorable showing it would appear that there is no justification for any statement to the effect that the credit position of Engineers could have deteriorated since Dr. Badger's valuation. (Pref. Exh. 29-A, R. 2088a *et seq.*)

D. Analysis of Operating Performance of Three Former Operating Subsidiaries of Engineers for 1946, 1947 and 1948 Covering the Three Year Period Subsequent to Badger's Valuation (Pref. Exh. 29-A, R. 2088a).

It is our position that the predictions of Dr. Badger embracing a period of three years have now become "actualities."[37] Events subsequent to the testimony of Dr. Badger in January, 1946, serve only to deepen the conviction that his estimates, as well as those of the Commission, were most conservative. In lieu of the generalities of the Central-Illinois and White groups and the vague and indefinite references to isolated fragments of statistical data, we have prepared and submitted to this Court, for such consideration as it deems appropriate, the record of performance of Virginia, Gulf States and El Paso for the years 1946, 1947 and 1948. No one can examine these without concluding that prediction has ripened into performance and the performance has exceeded any-

[37] *St. Louis Southwestern Ry. Co. v. Henwood*, 157 F. (2d) 337 (C. C. A. 8, 1946), cert. den. 330 U. S. 836 (1947), rehearing den. 331 U. S. 870.

one's expectation. The following data should completely eliminate from this case any contention by the common stockholders that the decision of the Commission in the instant case was unfair.

It is our position that the factual changes subsequent to the consummation of the plan (assuming *arguendo* their relevancy and the propriety of their recognition by judicial notice for the purpose of substitution by Central-Illinois and White, as valuation evidence, in lieu of the decision of the Commission) are not sufficiently significant to affect the Commission's valuation. In any event, these changes have not adversely affected the earnings and condition of the three underlying companies, which have materially improved and more than fulfilled Dr. Badger's estimate of value and prediction as to their continued progress.

It has been demonstrated that on the basis of past earnings performance of the companies comprising Engineers there has been a material improvement in earnings and asset position of the consolidation since the valuation made by Badger in January 1946 (Pref. Exh. 29-A). This improvement is, of course, the result of the improvement in the earnings position of the three operating companies. The tabulation set forth in Appendix G, *infra*, shows the record of earnings for each of the principal subsidiaries, *i. e.*, Virginia, Gulf States and El Paso.

The figures in Table 7 (Appendix G) show that substantial improvement in earnings available for common was experienced by each subsidiary in each of the years 1940 through 1947. In the case of Virginia, such net earnings were 35% greater in 1947 than in 1940. For Gulf States, the increase in earnings in

the same period was 85%, and for El Paso such increase was 147%. The following table combines the earnings figures of the subsidiaries into over-all earnings figures for selected years, as follows:

NET EARNINGS AVAILABLE FOR COMMON
SELECTED YEARS

	1940	1945	1947	12 mo. ended 9/30/48
Virginia	$3,954,352	$4,094,036	$5,324,075	$4,062,427
Gulf States	1,841,366	2,071,569	3,415,480	3,646,794
El Paso	471,256	691,482	1,030,761	1,107,301
Total	$6,266,974	$6,857,087	$9,770,316	$8,816,522
% to 1940	100	109	156	141
% to 1945	—	100	143	120

Combined earnings of the subsidiaries for the year 1947 and for the 12 months ended September 30, 1948, were 156% and 141%, respectively, of 1940. Likewise, earnings for these periods were 143% and 120%, respectively, of 1945 earnings. Steps have been taken by management to remedy the temporary earnings reduction in the case of Virginia, which steps will be described below. It may be concluded on the basis of the percentage increase in net earnings available for common that the three operating companies formerly subsidiaries of Engineers have experienced a substantial growth since 1940, with much of this growth occurring after 1945.

The earnings record of these companies in large measure is caused by their location in areas characterized by rapid expansion. Thus Virginia is located in a territory in which the major industries are tobacco and tobacco products, textiles (including rayon), ships, food and related prod-

nets, wood products, paper and pulp, and other commodities.[38] Many of these industries are characterized by a high rate of growth. Gulf States derives a substantial portion, approximately 12.1%, of its total operating revenues from sales of electric energy or steam directly to the oil industry for refining, pipe line pumping and well pumping and drilling. The production of chemicals, including synthetic rubber, also constitutes an important industry and sulphur, salt and a diversified list of agricultural commodities are other important products of its territory.[39] In connection with the future outlook of the company, it should be pointed out that contracts have recently been signed with Esso Standard Oil Company and Ethyl Fuel Corporation extending the original terms of contracts with these two firms to December 31, 1961, and May 1, 1960, respectively, whereby the maximum combined contract demands under both contracts have been increased by 43,000 kwh.[40] This tangible evidence of future growth taken in conjunction with the inherent growth characteristics of the industries located in the territories served by Gulf States indicates that the current record of this company regarding revenue and earnings cannot be considered a temporary phenomenon.

El Paso is also located in an area characterized by rapid industrial expansion. The City of El Paso has always been an active trading center in extensive farming and cattle raising regions. Industries in that vicinity include copper refining and smelting plants, railroad repair shops, and oil refineries.[41]

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[38] Prospectus of Virginia dated November 15, 1948, p. 12 (filed with SEC).

[39] Registration Statement filed with SEC in January 1949, p. 7.

[40] Ibid.

[41] Moody's Public Utility Manual, 1948, p. 283.

Evidence of growth is indicated in various operating statistics of these companies relating to gross dollar sales of electricity, kilowatt sales of electricity, and number of customers served. Current performance of these companies is compared to 1940, a measure of prewar performance, and to 1945, which was the last complete year preceding Badger's valuation. The balance of this section is devoted to such statistics and the analysis thereof.

The tabulation set forth in Appendix H is a comparison of gross sales of electricity of the operating subsidiaries classified according to type of customer, *i. e.*, residential and rural, commercial, industrial, and others for the year 1940 and for the years 1944 through September 30, 1948. Electricity sales have consistently accounted for over 90% of the gross operating revenues of each company. As indicated in Table 8 (Appendix H), each of the companies has shown a substantial growth in gross sales of electricity. Thus sales of Virginia increased from $23,754,357 in 1940 to $45,676,204 for the twelve months ended September 30, 1948, an increase of 94%. The increase from 1940 to the latter date for each of the customer classifications was substantial and consistent. The percentage increase in gross sales for each customer classification was 79% for residential and rural, 107% for commercial and 69% for industrial sales. Moreover, increases have been shown since the year 1945 which was the last year preceding Badger's valuation (Pref. Exh. 29-A). Thus gross operating revenues of Virginia have increased from $37,912,214 in 1945 to $45,676,204 for the twelve months ended September 30, 1948, which represents an increase of 20%. Analysis of each of the customer classifications moreover indicates that in-

creases were shown for each classification. Thus, sales to residential and rural customers increased 24% from 1945, commercial sales increased 11% over 1945 and industrial sales have increased 24% over 1945. As regards Virginia, the Central-Illinois and White contentions that revenues of Virginia at the time of Badger's valuation were *temporary* are not borne out by actual sales in the post-war era. Current revenues from sales of electricity have greatly exceeded the revenues obtained in 1940 and 1945.

Gulf States shows a similar growth from 1940 to the twelve months ended September 30, 1948. Its gross sales of electricity have increased from $9,-740,738 in 1940 to $19,529,643 for the twelve months ended September 30, 1948, an increase of 100%. In that period, residential and rural sales increased 97%, commercial sales increased 34%, and industrial sales increased 97%. In other words, the Company currently has a dollar volume of sales twice as great as in 1940. Comparing the year 1945 with the twelve months ended September 30, 1948, reveals that this Company has undergone substantial growth in that period. Thus, gross sales of electricity increased from $15,888,915 in 1945, declined to $14,858,359 in 1946, and then increased through 1947 to $19,529,643 for the twelve months ended September 30, 1948. The gain from 1945 through 1948 represents a 23% increase. Residential and rural sales increased 39% and commercial sales increased 60% from 1945 to September 30, 1948, while industrial sales declined 6% in that period. Although Gulf States derived substantial revenues from sales to pipe line companies during the war, which sales decreased as ocean tanker service was resumed following the termination of hostilities, Gulf States had almost made up revenue

losses in the industrial category by September 30, 1948. Moreover this revenue loss was more than offset by increases in other directions.

El Paso Electric Company shows a growth characteristic of the two preceding companies in that its gross sales from electricity increased from $2,782,918 in 1940 to $5,268,555 for the twelve months ended September 30, 1948, an increase of 89%. In other words, the operating revenues of this company were nearly twice as great in 1948 as in 1940. A classification of sales by type of customers is not available for the later date. Comparison of sales by type of customer for the year 1947 with the year 1940 reveals that residential and rural sales have increased 50%, commercial sales have increased 59% and industrial sales have increased 85%. Likewise, comparison of gross sales of electricity for the twelve months ended September 30, 1948, with the year 1945 indicates that such sales have increased 30% with sizeable increases being recorded in each of the customer classifications from 1945 to 1947.

It may be concluded from this tabulation (Appendix II) that the increase in gross sales of electricity for each of the operating companies from 1940 through September 30, 1948, has been steady and consistent. Moreover, it is quite evident that the current record of such sales has, on the whole, greatly exceeded the records established during the war years. A sufficient period has now elapsed since the termination of hostilities to indicate that the "wartime" level of sales was not a temporary phenomenon.

A comparative study of kilowatt sales of electricity to customers of each subsidiary by total and by customer classification is contained in Table 9 (Appendix I), *infra*.

That tabulation indicates that each of the operating subsidiaries has sold increasing amounts of electric energy to each of its customer classifications since the year 1940 and since the year 1945. Virginia increased its sales of electricity from 1,066,142,000 kwh in 1940 to 2,360,465,000 kwh for the twelve months ended September 30, 1948, an increase of 21%. In that period, residential and rural sales increased 125%; commercial sales increased 179% and industrial sales increased 60%. Kilowatt sales increased from 1,934,267,000 kwh in 1945 to 2,360,405,000 kwh for the twelve months ended September 30, 1948, an increase of 22%. By the later date, residential and rural sales had increased 45% over 1945, commercial sales had increased 11% over 1945 and industrial sales had increased 23% over 1945. Gulf States likewise showed a remarkable growth in electricity sales. Thus, total sales of electricity increased from 705,-744,000 kwh in 1940 to 1,622,556,000 kwh for the twelve months ended September 30, 1948, an increase of 130%. In that period, residential and rural sales increased 147%, commercial sales increased 213% and industrial sales increased 107%. The sales of 1,622,556,000 kwh for the twelve months ended September 30, 1948, contrast with sales of 1,434,579,000 kwh in 1945, which represent an increase of 13%. The relatively slight increase is accounted for by the fact that industrial sales which had decreased in 1946 had returned only to their 1945 level. However, it should be remembered that increases in other categories more than offset the decrease in the industrial category, for residential and rural sales increased 55% and commercial sales increased 69% during this period.

In the case of El Paso, there are no statistics available relative to kilowatt sales for the twelve months

ended September 30, 1948, the latest year for which such data is available being 1947. Kilowatt sales of electricity increased from 133,451,000 kwh to 292,016,000 kwh in 1947, an increase of 119%. Residential and rural sales increased 83%, commercial sales increased 93% and industrial sales increased 95%. Also a substantial increase in kilowatt sales was recorded from 1945 through 1947, which increase was from 223,117,000 kwh to 292,016,000 kwh or 33%. Again increases in sales were recorded for each customer classification from 1945 through 1947 with residential and rural sales increasing 38%, commercial sales increasing 61% and industrial sales increasing 27%. This is further indication that the sales of electricity during the war period were not a temporary and unrepresentative experience of the company at the time Badger made his valuation in January 1946.

It may be concluded on the basis of this tabulation (Appendix I) that the operating companies which formerly were subsidiaries of Engineers have shown an outstanding ability to market electric energy throughout the period under consideration. This record of increased revenue sales and kilowatt sales, especially from 1944 to the present, took place in spite of sizeable rate reductions during that period. As stated on page 14 of its Prospectus dated November 15, 1948 (filed with the S. E. C.), Virginia reduced rates on thirteen separate occasions, which reductions represented savings to consumers in the amount of $4,064,000 for these years. Likewise, in its registration statement filed with the S. E. C. in January 1949, Gulf States has made rate reductions from 1944 on. These reductions have effected savings to its customers amounting to $687,000 for the period. Moreover, because of their location in

territories characterized by rapid growth, these companies have been able to more than offset losses of sales to war time customers. It may be concluded that the current operating record of these companies is representative of their future ability to sell electricity at reasonable rates.

It should be pointed out that these companies have substantially increased their residential kilowatt sales and revenues. Thus for Virginia the average annual use of electric energy per residential customer (including rural customers on residential rates) was 1,682 kwh for the twelve months ended September 30, 1948 as compared with 1,134 for 1940. Corresponding average annual billings per residential customer were $49.72 and $42.22 respectively. The average amount billed to residential customers was 2.96 cents per kwh for the twelve months ended September 30, 1948 and 3.72 cents per kwh for 1940.[42] Similar statistics may be cited for Gulf States. The average annual use of electric energy and average annual billings per residential customer for the twelve months ended September 30, 1948 were 1,363 kwh and $44.54 as compared with 1,021 kwh and $41.89 for 1940. The average rate billed to residential customers was 3.27 cents per kwh for the twelve months ended September 30, 1948 and 4.10 cents per kwh for 1940.[43] Likewise El Paso has shown a substantial increase in residential customer usage of electricity. For this company the average annual use of electric energy and average annual billings per residential customer for the year ended December 31, 1947 were 1,649 kwh and $44.52 as compared with 1,221 kwh and $39.06 for 1940. The average rate billed to resi-

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[42] Prospectus of Virginia filed with the SEC dated Nov. 15, 1948, p. 13.

[43] Registration Statement filed with SEC January 1949, p. 13.

dential customers was 2.7 cents per kwh for 1947 and 3.2 cents per kwh for 1940.[18]

The tabulation, included in Appendix J, indicates the growth in number of consumers of the operating subsidiary companies, Virginia, Gulf States and El Paso from 1940 through the twelve months ended September 30, 1948.

The figures in Table 10 (Appendix J) indicate that there has been a substantial increase in the total number of customers served by these subsidiary companies. Thus Virginia was serving a total of 424,792 customers at September 30, 1948 in contrast with 284,084 in 1940, an increase of 50%. For the same two dates residential and rural customers increased 51%, commercial customers increased 40% and industrial customers on a reclassified basis decreased 41%. It should be pointed out, however that total kwh sales to industrial customers had increased 50% in this period. Comparing the number of customers of Virginia at September 30, 1948 with the number of customers in 1945 shows that the total number of customers had increased 20% with residential and rural customers increasing 19%, commercial customers increasing 20% and industrial customers increasing 9%. Gulf States also showed sizeable gains in customers from 1940 to September 30, 1948, the total number increasing from 92,132 in 1940 to 170,250 at September 30, 1948, an increase of 85%. In this period, residential and rural customers increased 88%, commercial customers increased 68% and industrial customers increased 53%. If the year 1948 is compared with the year 1945, we see that the total number of customers increased from 124,902 on the earlier date to 170,250 on the later date, an increase of 36%. In this postwar

[18] Moody's Public Utilities Manual, 1946, p. 914 and 1948, p. 284.

period residential customers increased 35%, commercial customers increased 40% and the number of industrial customers increased 30%. El Paso conformed to the experience of the above companies. Thus the total number of customers increased from 30,341 in 1940 to 41,966 in 1947, an increase of 38%. Residential and rural customers increased 36%, commercial customers increased 45% and industrial customers increased 45%. If a comparison is made between 1945 and 1947 it will be noted that the total number of customers increased from 37,544 in 1945 to 41,966 in 1947 or 19%. Residential and rural customers increased 15%, commercial customers increased 43% and industrial customers increased 100%.

In summary it may be said that the expanding character of the territory is reflected by the substantial increases in number of customers of these former subsidiaries occurring from 1940 and 1945 to 1948.

The substantial increase in the number of customers served by these subsidiaries since 1945 has greatly exceeded the expectations of company officers at the time of Badger's valuation (Pref. Ex. 29-A). As an indication of this, we may note that the Registration Statement of Gulf States, filed with the S.E.C. in January 1948, states on p. 14 as follows:

> "* * * At the end of the war a substantial reduction in load was expected and further increase in capacity did not appear necessary. *However such reduction did not materialize*, as such cutbacks as did occur from military establishments and war industries were more than offset by the general increase in business and the addition of new customers". (Italics ours)

On p. 19 of the Prospectus of Virginia, dated November 15, 1948, filed with the S.E.C., general refer-

ence is made to the fact that the rate of growth in system loads has increased greatly due to the general increase in business and the addition of new customers. In fact, the company has had to rely greatly on interconnections to meet its existing requirements.

Although Virginia showed a decline in net earnings available for common in the twelve months ended September 30, 1948, its management has taken steps to remedy this situation. Beginning September 1, 1948, the temporary 5% discount applicable to certain classes of customers was eliminated and in August 1948 the application of fuel clause riders in certain of its customers filed rates, was broadened. The estimated annual increases in revenues because of these two changes, based on the level of use by customers at the respective times such changes were made, was $1,750,000.[45] Moreover, in a footnote on page 9 of the prospectus referred to above, it is estimated that the net sum of operating expenses and depreciation would have been reduced by $1,500,000 had the new Possum Point generating plant been in operation through the twelve months ended September 30, 1948. This plant was scheduled to be in operation by the end of 1948. Finally, increases in gas rates in the Norfolk-South Norfolk and Newport News-Hampton areas became effective on November 1, 1948. These rates were designed to produce additional revenues amounting to $500,000 annually.[46]

Admittedly, the earnings for the twelve months ended September 30, 1948 do not fully reflect the increased coal and wage cost which have occurred in 1948. Thus, on p. 14 of the Prospectus of Virginia dated November 15, 1948 (filed with the S. E. C.), it

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45 Prospectus of Virginia filed with the SEC dated Nov. 15, 1948, p. 14.

46 Ibid., p. 16

is estimated that fuel costs for the twelve months ended September 30, 1948, would have been $800,000 greater had the present average contract price of coal been in effect for the full twelve months. In addition, wage increases granted during the twelve months ended September 30, 1948, amounted, on an annual basis, to approximately $779,000, of which $275,000 is reflected in the income statement for the above period. Finally, the income statement for this period does not fully reflect the annual interest expense of the $11,-459,000 3⅛% convertible debentures issued in April, 1948, which expense on an annual basis is $367,306.

For the convenience of the Court, there is presented a tabulation showing the net effect of these anticipated increases in income and expenses of Virginia on an annual basis as follows:

Increase in Gas Rates	$ 500,000
Discontinuance of Temporary Discounts and Application of Fuel Clause Riders	1,750,000
Savings Arising from Operation of Possum Point Plant	1,500,000
Total Increase in Income	$3,750,000
Deduct: Increased Expenses	
Increase in Fuel Costs	$ 800,000
Annual Interest Requirements on 3⅛% Conv. Deb.	367,306
Increased wage costs not reflected in Income Statement as of 9/30/48	504,000
Estimated Increase in Net Income before Federal Income Taxes	$2,078,694
Deduct 38% Federal Income Tax	789,904
Estimated Increase in Net Income	$1,288,790

Adding this anticipated increase in net income to t earnings available for common as of September 1948, in the amount of $4,062,427 would produce es mated net earnings of $5,351,217, which would slightly greater than the earnings for the year end December 31, 1947. This contrasts with 1945 earnin of $4,094,036, the latest earnings figure available at t time of Badger's valuation, which was predicated the maintenance of earnings at that level. There every reason to believe that the past increase in ki watt sales will be maintained, which would result an even greater increase in earnings available f common.

In conclusion, it should be remembered th Badger's conclusions relative to the value of Eng neers preferred (Pref. Exh. 29-A) were predicat upon the continuance of the earnings of subsidiari at the then-existing level. Data in this section, ho ever, shows that the earnings performance anticipate at the time of his valuation has been *greatly exceed* and, unlike the innuendoes of Central-Illinois an White, such earnings did not recede to pre-war leve in the post-war periods. Furthermore, it has bee shown that current sales of electricity are well abo their levels for 1940 and 1945, whether they a measured in dollars or in kilowatt hours. Moreove it has been shown that the growth of the territori served by these companies has been reflected in th substantial increases in number of customers serve from 1940 and from 1945.

E. Comparison of Engineers Actual Earnings for 1946 and Pro Forma Earnings for 1947 and for the Twelve Months Ended September 30, 1948 With the Earnings Estimate for 1946 of Engineers (Eng. Exh. 63, R. 1828a-1829a).

Statements have been made above to the effect that Badger's valuation of the preferred stocks of Engineers was not based upon temporary and inflated wartime earnings, as contended by Central-Illinois and White, but upon earnings reasonably permanent in character. It will be recalled that his valuation was predicated upon the maintenance of the consolidated earnings of Engineers at their then-existing level. Badger's valuation was made on January 24, 1946. The best tangible evidence of anticipated earnings at that time was to be found in an exhibit of Engineers (Engineers Exh. 63, R. 1828a-1829a). For the convenience of the Court a comparison of that estimated income statement with both the actual consolidated income statement found in Table 1 (Appendix A, *infra*) and with the pro forma consolidated income statements for the year ended December 31, 1947 and for the twelve months ended September 30, 1948, shown as Tables 2 and 3 respectively (Appendix B and C, *infra*) has been prepared and set forth in Table 11 (Appendix K, *infra*).

That table shows conclusively that the earnings *estimate* for 1946 has been substantially exceeded in 1946, 1947 and for the twelve months ended September 30, 1948. Thus, the estimated earnings statement establishes that total charges and preferred dividends of the consolidation, which includes dividends on Engineers' preferred stock, were covered 1.85 times in 1946, 2.01 times in 1947, and 1.81 times for the twelve months ended September 30, 1948. The cover-

age expectation at the time of Badger's valuation (1.68, R. 1829a) has been excelled in all of the three subsequent years. Furthermore, it has been shown in the preceding section dealing with performance of operating companies that there is every indication that the coverage rate of 1.81 for the twelve months ended September 30, 1948 will be bettered in the foreseeable future. Therefore, the tabulation contained in Appendix K is further proof that Badger's valuation was based upon earnings, reasonably permanent in character.

Conclusions Respecting Present Applicability of Badger's Valuation.

The material presented, *supra*, has proved conclusively that Badger's valuations of Engineers preferred stocks at January 1946 were not based upon transitory factors as regards interest rates and earnings and asset coverages. It has been amply demonstrated that interest rates and preferred stock yields have remained relatively close to their levels at January 1946 and that such increases as have occurred represent relatively minor fluctuations. There is every expectation that the present level of interest rates will be maintained in the foreseeable future. It has been and will be the established policy of the Federal Reserve Board and the Treasury Department to peg, at par, the price of the long-term bank ineligible 2½% Treasury Bonds. Following the November election, investor confidence has been increased with respect to the ability of the Federal Reserve Board to maintain this rate with the result that interest rates and preferred stock yields have consequently declined. It has also been shown that the consolidated earnings record of Engineers (on a pro forma basis) has substantially

improved subsequent to Badger's valuation. In fact, consolidated earnings have materially exceeded the best estimates of anticipated earnings available at January 1946 and prove conclusively that Badger's valuation was predicated upon earnings permanent in character. In addition, the improved record of earnings has resulted in giving Engineers preferred on a pro forma basis a substantially increased asset coverage, whether such coverage be measured in terms of consolidated book value per share or pro forma net assets per share at market values (Tables 6 and 6A, Appendix F). Finally, the operating record and characteristics of the three operating subsidiaries of Engineers establish that, without exception, these companies are characterized by rapid growth. This growth was measured by comparing gross income, current earnings, sales of electricity, both in dollars and in kilowatt hours and number of customers, with similar statistics for 1940, a pre-war year, and 1945, the last year previous to Badger's valuation in 1946. It was there shown (1946 estimate) that the indicated increases will be continued into the future. In view of these demonstrated facts and conclusions, namely that interest rate presently remain at historically low levels, that the earnings and asset coverage of Engineers has shown substantial improvement since 1946, and that the operating companies are characterized by ever increasing expansion, it is amply evident that, were the preferred stocks of Engineers presently outstanding and being currently traded in the open market, such stocks would be selling at or near their respective call prices. Were there no call features attaching to these preferreds, they would be selling at prices materially in excess of their call prices.

In addition, assuming *arguendo* that this Court

may take judicial notice of the variety of statistical data, general utility trends and economic conditions[47] selected from various publications, and occurring long after consummation of the plan, and concludes that such subsequent changes discredit or undermine the Commission's valuation (which we deny), it is urged that in such event the Central-Illinois and White Briefs cannot serve as a substitute for the Commission's initial valuation and the subsequent review by the District Court. That function has, by statute, been allocated to the Commission and remand for its consideration would then be required.[48] Consequently, it would be the duty of this Court to return this case to the Commission for a fresh determination. Similarly, assuming for the sake of argument that there has been a substantial radical change not envisaged or foreseen which would warrant a reopening upon an express request or otherwise,[49] then it is equally true that this Court should direct a remand and not make its own valuation. On this score it must be pointed out that Central-Illinois and White have never claimed a radical and substantial change nor have they sought a remand—well knowing, no doubt, that such request would lack both factual and legal basis. Nor for that matter did the two courts below find the record stale, even though the same

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47 Cf. *Insurance Group Com. v. Denver & R. G. W. R. Co.*, 329 U. S. 607, 620 (1947).

48 *S. E. C. v. Chenery Corp.*, 318 U. S. 80, 88 (1943); *Schwabacher v. United States*, 334 U. S. 182 (1948).

49 *R. F. C. v. Denver, Rio Grande W. R. Co.*, 328 U. S. 495, 521-522 (1946); *Insurance Group Committee v. Denver & R. G. W. R. Co.*, 329 U. S. 607, 611-612 (1947); *Group Institutional Investors v. Chicago, Milwaukee, St. P. & P. R. R. Co.*, 318 U. S. 523, 542 (1943); *Ecker v. Western Pacific R. Corp.*, 318 U. S. 448 (1943), rehearing den. 318 U. S. 803 (1943).

type of material was presented in the briefs there.[50] In any event, it is a rare occasion[51] when this Court will reopen a case long pending before an administrative body and the courts on the basis of a substantial and radical change in economic conditions, even upon express request, and then only if substantial injury to the party affected can be clearly established.[52] Any other rule would result in interminable litigation and would encourage objectants to prolong the proceeding in the hope that economic conditions would materially change to their advantage. Even more so is this salutary principle applicable in the instant case where the plan has been virtually consummated with the approval of Central-Illinois and White who, among others, opposed any stay (such as was sought by Streeter) and yet, at this time, indirectly imply significant economic changes. By virtue of such opposition to a stay which was denied by the two courts below and a Justice of this Court, and, in fact, because of the demand by counsel for Engineers for the immediate execution of the plan, in order to insure the success of the warrant program in view of the market conditions then existing (R. 374a-375a) the District Court directed the plan to be carried out.[53] That consummation resulted in the termination of the preferreds rights to dividends and

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[50] The Circuit Court was certainly familiar with the rule requiring a remand to the Commission for its reconsideration where the record furnished the court has grown stale (R. 26) and the District Court expressly accepted Dr. Badger's values and assumed their applicability at that time on May 15, 1947 "in the absence of a showing of changed circumstances" (R. 290a).

[51] *Interstate Commerce Commission* v. *Jersey City*, 322 U. S. 503, 514-515 (1944); *United States* v. *Pierce Auto Freight Lines*, 327 U. S. 515, 534-535 (1946).

[52] *Insurance Group* v. *Denver & R. G. W. R. Co.*, 329 U. S. 607, 619 (1947).

[53] In fact the dissolution of Engineers has taken place and the directors have been constituted trustees pursuant to the provisions of Delaware corporation law (R. 15).

left them without any tangible transferable evidence of their interest in the escrow, while the common stock litigated the payment of the full amount as approved by the Commission. It ill becomes the common who urged consummation, and cut off the preferreds rights and obtained the benefits of such consummation, to urge a revaluation by this Court on the basis of so-called statistics in their Briefs, without any opportunity to other parties to subject that data to examination and cross-examination. The Central-Illinois and White Briefs are no substitute for evidence and hearing nor is this Court the proper place for a trial of the facts solely on the basis of briefs. The rights of the parties became fixed as of the time of consummation and should not be subjected to reappraisal at this time. It is seriously doubted that any court has gone so far as to permit a reopening at such a late date as this—and even the general principle that equity speaks as of the date of the entry of the decree does not support such view—for its decree has already been entered and more than that, *de facto* consummation has occurred. The *de facto* consummation was clearly recognized by the court below, which in directing a remand to the Commission for the valuation noted that in view of the denial of the stay of consummation, "the escrow agreement accordingly delimits the area in which the plan to be approved by the Commission and district court must fall" (R. 40). What justice or equity rests with the common who have obtained the result sought, that is, to pass on the underlying companies and cut off the preferred dividend rights and at the same time urge alleged changes in economic conditions, in an effort to obtain a valuation by this Court on the basis of their Briefs? Such procedure should not be sanctioned by this Court, especially where the Commission's determination has been amply sup-

ported not only by the facts prior,[51] but also subsequent, to the consummation of the plan.

(We cannot let go unnoticed several statements made in the Central-Illinois Briefs and have found it necessary to discuss them in an addendum hereto.)

Conclusion.

For the reasons stated herein and in the Briefs previously submitted, the judgment of the Court of Appeals for the Third Circuit should be reversed with appropriate mandate to the District Court to enforce the plan as approved by the Commission insofar as it provides for the payment to the preferred stockholders of amounts equal to the respective redemption prices of their stock (less the sum already received) plus adequate recompense for the delay in payment. If this Court determines however, that the Commission has erred in the valuation process, this proceeding should be returned to the Commission for a fresh determination, in accordance with the instructions of this Court.

Respectfully submitted,

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[51] In *Public Service Commission* v. *S. E. C.*, 166 F. (2d) 784, 788 (C. C. A. 2, 1948), cert. den. 334 U. S. 838 (1948), the following pertinent comment is made: "There was certainly some basis for the valuation of the SEC when the order of the District Court was entered on July 16, 1947. How far later events may have thrown doubt upon the plan, as then approved, we cannot consider; we pass upon the order as of the time when it was entered."

Addendum.

1. Accepting *arguendo* the Central-Illinois valuation of the enterprise of $103,700,000 (Central-Illinois Brief, pp. 101-102), according call prices to the preferred would result in allocating to them 40.9% of the enterprise and to the common 59.1% of the enterprise. If the valuation of the enterprise made by Badger of $118,000,000 is accepted (R. 1163a), the preferred will receive under the plan, 36% of the enterprise and the common will receive 64% of the enterprise. It is apparent therefore that the preferred are in a position where the major portion of the enterprise provides a cushion against any decline in value. This is significantly different from the situation in the *Otis* case where the preferred stock interest in the enterprise was valued at 95% and the common stock at only 5%.

2. The Central-Illinois Answering Brief contains the following statement (at p. 26): "The record establishes that when adjustment is made for such balance sheet items, the asset value of the Engineers preferred stocks barely approximate $100 per share." The authority for this statement is Engineers Exhibit 77 (R. 1851a). That conclusion is not supported by this Exhibit. Engineers Exhibit 77 supports and confirms Dr. Badger's conclusion that the book value or equity per share for the preferred stock of Engineers before deducting reserves was $192.51 and after deducting reserves, $181.31.

In the event that Central-Illinois was referring to Engineers Exhibit 78 (R. 1852a) for its conclusion,

we respectively point out (1) that the Exhibit was entirely irrelevant and incompetent, and (2) that the conclusions set forth therein were completely disclaimed by Dr. Badger (R. 1162a *et seq.*). Engineers Exhibit 78 showed that after excluding certain reserve items, there was only available for the preferred the sum of approximately $39,000,000 (R. 1851a). Dr. Badger, in commenting upon this Exhibit to which objection was made by the preferred stockholders, pointed out that after adding up the $16,000,000 of cash, $65,000,000 for Virginia (which was Barnes' appraisal), $30,000,000 for Gulf States and $7,000,000 for El Paso, in "giving a valuation of these assets, in accordance with the evidence and/or records in this case" the value of the assets of Engineers was equal to $118,000,000 (R. 1163a). He characterized as "ludicrous" the value of $39,000,000 which appeared in Engineers Exhibit 78.

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APPENDIX A - TABLE 1

COMPARATIVE INCOME ACCOUNT ANALYSIS - CONSOLIDATED BASIS
ENGINEERS PUBLIC SERVICE COMPANY, INC., AND SUBSIDIARIES
YEARS ENDED DECEMBER 31, 1940-1946, INCLUSIVE (1)

	1940	1941	1942	1943	1944	1945	1946
Operating Revenues	$57,093,653.	$64,739,518.	$73,836,543.	$59,570,893.	$72,031,433.	$63,801,247	$61,287,542.
Operating Expenses	37,150,113.	41,270,211.	45,999,623.	35,696,623.	44,729,384.	39,111,592(2)	40,623,973(2)
Net Operating Revenues	$19,943,540.	$23,469,297.	$27,836,920.	$23,874,270.	$27,302,039.	$24,689,655.	$20,663,569.
Other Income and Expense - Net	d168,997.	d28,539.	d252,924.	141,627.	40,300.	d222,120.	38,798.
Total Income Before Taxes	$19,774,543.	$23,440,758.	$27,583,996.	$24,015,897.	$27,342,339.	$24,467,535.	$20,624,771.
Deduct - Fed. Inc. & E.P. Taxes, Net	2,590,241.	6,312,320.	10,641,147.	12,282,112.	13,420,186.	11,466,235(3)	6,194,756(3)
Balance	$17,184,302.	$17,128,437.	$16,942,849.	$11,733,785.	$13,922,153.	$13,001,300.	$14,430,015
Add Holding Co. Income Less Expense	34,028.	d122,193.	d187,723.	d107,249.	d320,881.	d 886,978.(4)	d 893,452(4)
Available for Debt, Pfd. Div. & Min. Int.	$17,218,330.	$17,006,244.	$16,755,126.	$11,626,536.	$13,601,272.	$12,114,322.	$13,536,563.
Total Debt, Pfd. Div. & Minority Int.	14,149,364.	14,117,296.	13,733,442.	8,287,496.	8,824,808.	8,019,466(5)	7,327,784(5)
Balance to E.P.S.Co.	$ 3,068,966.	$ 2,888,948.	$ 3,021,684.	$ 3,339,040.	$ 4,776,464.	$ 4,094,856.	$ 6,208,779.
x Charges & Pfd. Div. Earned	1.22	1.20	1.22	1.40	1.54	1.51	1.85
Operating Ratio	65.07%	63.75%	62.30%	59.92%	62.10%	61.30%	66.28%
% Depreciation: Total Operating Revenue	11.1	10.5	9.2	9.1	7.8	7.4	8.0
% Maintenance: Total Operating Revenues	6.7	6.5	6.8	6.4	7.0	6.9	6.9
% Mntce. & Deprec.: Total Operating Revenues	17.8	17.0	16.0	15.5	14.8	14.3	14.9

(1) Data for 1940-1944 taken from Preferred Stockholders Exhibit No. 29-A, p. 2098 a. Figures rounded to nearest dollar. Data for 1945 and 1946 taken from Moody's Public Utility Manual 1947, pages 1295-7 for that year.

(2) Figure represents sum of detailed operating expenses other than Federal Income and Excess Profits taxes and amortization of plant acq. adj. as shown in Moody's Public Utilities.

(3) Does not give effect to reduction in Federal Income and Excess Profits Taxes resulting from extraordinary non-recurring deductions, amounting to $7,528,290 in 1945 and $540,247 in 1946, as indicated in note (5) to comparative consolidated income account in Moody's for 1947 p.1296. If such items were used to reduce taxes accordingly, overall coverage would be 2.45 in 1945.

(4) Holding Company expenses not segregated. Amounts shown represent amortization of plant acquisition adjustments.

(5) Detail in Moody's Public Utility Manual for 1947, p.1295-6:

	1945	1946
Interest on Long-Term Debt	$3,443,610.	$2,818,270.
Other Interest	80,068.	26,537.
Amort. Debt Disc. and Exps.	325,220.	363,197.
Subs. Pfd. Stock Div.	2,042,856.	2,042,856.
Div. on Pfd. Stk - E.P.S.	2,119,092.	2,119,093.
Minority Interest $17,074.	$10,905	
Less: Adjustment to reflect reduction arising from special charges in lieu of Fed. Inc. Taxes. See Tab. "Equity in Earnings of Subs. Year Ended 12/31/45", in Moody's Pub. Util. Man. 1947, p. 1297 8,454.	8,620.	10,905.
TOTAL CHARGES	$8,019,466.	$7,327,784.

APPENDIX B - TABLE 2

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PRO FORMA CONSOLIDATED INCOME ACCOUNT
ENGINEERS PUBLIC SERVICE COMPANY, INC., AND FORMER SUBSIDIARIES (1)
YEAR ENDED DECEMBER 31, 1947

	Virginia	Gulf States	El Paso	Combined	Engineers Public Service	Inter-Company Eliminations	Consolidated
Operating Revenues	$44,991,724.	$19,572,356.	$ 4,803,385.	$69,367,465.	$5,900,348. (2)	d$5,900,348.	$69,367,465.
Operating Expenses							
Operating Expenses and Maintenance	25,436,622.	9,143,033.	2,252,549.	36,832,204.	327,552. (3)	—	37,159,756.
Depreciation	3,111,201.	1,849,298,	323,333.	5,283,832.	—	—	5,283,832.
Taxes - Other	3,579,497.	1,547,453.	484,660.	5,611,610.	20,000. (3)	—	5,631,610.
Total	$32,127,320.	$12,539,784.	$3,060,542.	$47,727,646.	$ 347,552.	—	$48,075,198.
Operating Income	$12,864,404.	$ 7,032,572.	$1,742,843.	$21,639,819.	$5,552,796.	d$5,900,348.	$21,282,267.
Add: Other Income	d 6,159.	d53,675.	26,683.	d33,151.	177,585 (3)	—	144,434.
Balance	$12,858,245.	$6,978,897.	$1,769,526.	$21,606,668.	$5,730,381.	d$5,900,348.	$21,436,701
Deduct Federal Income Taxes	3,148,200.	2,150,652.	480,000.	5,778,852.	271,732. (4)	—	6,050,584.
Amortization of Plant Acq.Adj.	693,168.	201,316.	—	894,484.	—	—	894,484.
Miscellaneous Deductions	117,699.	—	23,167.	140,866.	—	—	140,866.
Available for Charges	$8,899,178.	$4,626,929.	$1,266,359.	$14,792,466.	$5,458,649.	d$5,900,348.	$14,350,767.
Charges and Preferred*Dividends	3,585,751.	1,211,449.	235,598.	5,032,798.	2,119,093.	—	7,151,891.
Available to E.P.S.	$5,313,427.	$3,415,480.	$1,030,761.	$ 9,759,668.	$3,339,556.	d$5,900,348.	$ 7,198,876.
x Charges and Preferred Dividends							2.01
x Parent Co. Pfd. Dividend Earned							4.40
Operating Ratio							69.30%
Interest and Amortization	$ 2,127,747.	$683,349.	$ 168,097.	$ 2,979,293.	$ —	$ —	$ 2,979,293.
Subsidiary Preferred Dividend	1,447,355	528,000.	67,501.	2,042,856.	—	—	2,042,856.
Minority Interest	10,649 (5)	—	—	10,649. (5)	—	—	10,649. (5)
Parent Co. Pfd.Div. Requirements	—	—	—	—	2,119,093.	—	2,119,093.
Total	$ 3,585,751.	$1,211,449.	$ 235,598.	$ 5,032,798.	$2,119,093.	—	$ 7,151,891.

(1) Statistics for subsidiaries appear in Moody's Public Utilities Manual, 1948, Virginia Electric at p. 743-4, Gulf States at p. 820-1, and El Paso at p. 284. As the Parent Company was placed in liquidation in 1947, it did not prepare an income account for 1947. Therefore, the Parent Company's statement for year ended December 31, 1946, Moody's Public Utilities Manual, 1947, p. 1297, has been used with adjustments as noted in Footnotes (2) and (3)

(2) Compiled as follows:

Company	Total Common Dividends	Pro Rata Share to E.P.S.Co.	Amount to E.P.S.Co.
Virginia Elec.& Pwr.Co.	$3,673,031.	99.80%	$3,665,685.
Gulf States Utilities Co.	1,623,473.	100.00	1,623,473.
El Paso Electric Co.	611,190.	100.00	611,190.
		Total.	$5,900,348.

(3) 1946 Operating Expenses of $272,960. increased by 20% to reflect higher materials and wage costs. Other taxes assumed to increase to $20,000 from $16,451 in 1946. Other income assumed to be the same as in 1946.

(4) Computation of Federal Income Taxes

Dividend Income	$5,900,348.
Less: 85% Dividend Inc. Credit	5,015,296.
Taxable Dividend Income	$ 885,052.
Other Income	177,585.
Total Tax Income	$1,062,637.
Less: Expenses and Other Taxes	347,552.
Taxable New Income	$ 715,085.
Federal Income Tax at 38%	$ 271,732.

(5) Minority interest computed as follows:

Earnings Available for Charges		$8,899,177.
Less: Interest & Amortization	$2,127,747.	
Subsidiary Pfd. Dividend	1,447,355.	3,575,102.
Earnings Available to Common		$ 5,324,075.
Percent Minority Interest		0.02%
Minority Interest		$ 10,649

APPENDIX C. - TABLE 3

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PRO FORMA CONSOLIDATED INCOME ACCOUNT
ENGINEERS PUBLIC SERVICE COMPANY, INC., AND FORMER SUBSIDIARIES (1)
TWELVE MONTHS ENDED SEPTEMBER 30, 1948

	Virginia	Gulf States	El Paso	Combined	Engineers Public Service	Inter-Company Eliminations	Consolidated
Operating Revenues	$48,575,136.	$22,004,260.	$ 5,268,555.	$75,847,951.	$ 5,449,187.	$d5,449,187.	$75,847,951.
Operating Expenses							
Operations	$26,283,513.	$ 8,352,662.	$ 2,224,445.	$36,860,620.	$ 354,858. (3)	—	$37,215,478.
Maintenance	3,893,876.	2,017,730.	278,580.	6,190,186.	—	—	6,190,186.
Depreciation	3,257,988.	2,201,798.	338,376.	5,798,162.	—	—	5,798,162.
Taxes - Other	3,924,971.	1,805,159.	531,818.	6,261,948.	25,000. (3)	—	6,286,948.
Total	$37,360,348.	$14,377,349.	$ 3,373,219.	$55,110,916.	$ 379,858.	—	$55,490,774.
Operating Income	$11,214,788.	$ 7,626,911.	$ 1,895,336.	$20,737,035.	5,069,329.	$d5,449,187.	$20,357,177.
Add: Other Income & Expense	d71,613.	d28,833.	43,394.	d57,052.	177,585. (3)	—	120,533.
Balance	$11,143,175.	$ 7,598,078.	$ 1,938,730.	$20,679,983.	$ 5,246,914.	$d5,449,187.	$20,477,710.
Deduct Income Taxes	2,559,493.	2,279,898.	586,600.	5,425,991.	226,010. (4)	—	5,652,001.
Amortization of Plant Acq. Adj.	693,168.	201,316.	—	894,484.	—	—	894,434.
Available for Charges	$ 7,890,514.	$ 5,116,864.	$ 1,352,130.	$14,359,508.	$ 5,020,904.	$d5,449,187	$13,931,225.
Charges and Pfd. Dividends	3,836,212.	1,470,069.	244,830.	5,551,111.	2,119,093.	—	7,670,204.
Available for Common	$ 4,054,302.	$ 3,646,795.	$ 1,107,300.	$ 8,808,397.	$ 2,901,811.	$d5,449,187.	$ 6,261,021.
x Charges and Preferred Dividends Earned							1.81
x Parent Company Preferred Dividends Earned							3.95
Operating Ratio							73.16%
Interest and Amortization	$ 2,380,732.	$ 764,569.	$ 177,330.	$ 3,322,631.	$ —	$ —	$ 3,322,631.
Subsidiary Pfd. Dividends	1,447,355.	705,500.	67,500.	2,220,355.	—	—	2,220,355.
Minority Interest	8,125. (5)	—	—	8,125.	—	—	8,125.
Parent Company Pfd. Div. Req.	—	—	—	—	$2,119,093	—	2,119,093.
Total	$ 3,836,212.	$ 1,470,069.	$ 244,830.	$ 5,551,111.	$2,119,093	—	$ 7,670,204.

(1) Compiled from Moody's Public Utilities Weekly Cumulative Index, 1948, Vol. 20, No. 31, p. 1745, No. 32, p. 1731, No. 33, p. 1722-3. As the Parent Company was in liquidation, it had not prepared any income statement. Consequently, the Parent Company income statement for the year ended December 31, 1946, Moody's Public Utilities Manual, 1947, p. 1297, has been used, with adjustments as indicated in Footnotes (2) and (3)

(2) Compiled as follows:

Company	No. Shares Outstanding 9-30-48	Current Dividend Rate	Estimated Div. Payments	Pro Rata Share to E.P.S.Co.	Amount to E.P.S.Co.
Virginia Elec.& Pwr.Co.	2,956,109	$ .90.	$2,660,498.	99.80%	$2,655,177.
Gulf States Utilities Co.	2,182,820	1.00	2,182,820.	100.00	2,182,820.
El Paso Electric Co.	381,994	1.60	611,190	100.00	611,190.
Total					$5,449,187.

(3) 1946 Operating Expenses of $272,960. increased by 30% to reflect higher materials and wage costs. General taxes assumed at $25,000. Other income assumed the same as in 1946.

(4) Federal Income tax computed as follows:

Dividend Income from Subsidiaries	$5,246,914.
Less: 85% Dividend Income Credit	4,449,877.
Taxable Dividend Income	797,037.
Miscellaneous Income	177,585.
Total Taxable Income	974,622.
Less: Expenses	379,858.
Taxable Net Income	$ 594,764.
Federal Income Tax at 38%	$ 226,010.

(5) Minority Interest computed as follows:

Earnings Available for Charges		$7,890,514.
Less: Interest & Amortization	$2,380,732.	
Subsidiary Preferred Dividend	1,447,355.	3,828,087.
Earnings Available for Common		$4,062,427
Percent Minority Interest		0.02%
Minority Interest		$8,125.

APPENDIX D - TABLE 4

ANALYSIS OF INCOME DATA
ENGINEERS PUBLIC SERVICE COMPANY, INC., (1)
YEARS ENDED DECEMBER 31, 1946, and 1947,
and
TWELVE MONTHS ENDED SEPTEMBER 30, 1948

	1946	1947(Est.)	Sept. 30 1948(Est.)
Bal.Subs.Earn.Applic. to Parent Co.	$8,327,874.	$9,759,668.	$8,808,397.
Earnings from Other Sources - Net	177,585.(2)	177,585.	177,585.
Total	$8,505,459.	$9,937,253.	$8,985,982.
Less Expenses, Taxes & Interest	560,800.(2)	619,284.	605,868.
Balance for Stocks of Engineers	$7,944,659.	$9,317,969.	$8,380,114.
Preferred Dividend Requirements	2,119,093.	2,119,093.	2,119,093.
Available for Common	$5,825,566.	$7,198,876.	$6,261,021.
x Preferred Dividends Earned	3.75	4.40	3.95

(1) Data for 1946 taken from Moody's Public Utility Manual 1947, p. 1295-7.

Data for 1947 and 1948 estimated from pro forma consolidated income statements made in Tables 2 and 3.

(2) Detail for 1946 taken from Moody's as follows:

Revenues from Misc. Investments	$ 129,240.
Misc. Revenue	48,345.
Total earnings from other sources	$ 177,585.
Operating Expenses	$ 272,960.
Federal Income Taxes	$ 271,389.
Other Taxes	16,451.
Total Expenses, Taxes & Int.	$ 560,800.

APPENDIX E - TABLE 5

COMPARATIVE CONSOLIDATED BALANCE SHEET - SUMMARY ANALYSIS
ENGINEERS PUBLIC SERVICE COMPANY, INC., AND SUBSIDIARIES (1)
DECEMBER 31, 1942-1946, INCLUSIVE

	1942	1943	1944	1945	1946
Subs. Debt and Notes	$148,981,500.	$ 87,755,000.	$117,224,471.	$ 96,781,812. (2)	$ 99,550,000. (2)
Subs. Pfd. Stock, Premium & Accrued Dividends	88,751,369.	34,672,338.	45,175,063.	42,787,720. (3)	42,787,720. (3)
Minority Interests	291,644.	72,836.	50,917.	68,521.	78,041.
Total Preceding Claims	$238,024,513.	$122,500,174.	$162,450,451.	$139,638,053.	$142,415,761.
Engineers' Preferred	$ 41,801,500.	$ 41,801,500.	$ 39,245,500.	$ 39,245,500.	$ 39,245,500.
Common Stock (1,909,968 Shares)	$ 1,909,968.	$ 1,909,968.	$ 1,909,968.	$ 1,909,968.	$ 1,909,968.
Reserves for Investment Loss	14,352,830.	4,350,471.	4,394,705.	3,160,760.	2,000,000.
Capital Surplus	24,877,635.	19,661,146.	18,843,979.	19,819,888.	20,637,665.
Earned Surplus	11,382,849.	12,701,846.	11,157,691.	27,018,931.	35,145,042.
Total Common and Surplus	$ 52,523,282.	$ 38,623,431.	$ 36,306,343.	$ 51,909,547.	$ 59,692,675.
Total Investment	$332,349,295.	$202,925,105.	$238,002,294.	$230,793,100.	$241,353,936.
Book Value Equity Per Share Pfd.	$225.65	$192.40	$192.51	$232.27	$252.10
Net Quick Assets	$ 14,491,331.	$ 14,579,270.	$ 17,146,619.	$ 23,426,481.	$ 23,588,122.
% Net Quick: Prior Obligations	6.09%	11.90%	10.55%	16.78%	16.56%
% Prior Obligations:Total Capital	71.62%	60.37%	68.26%	60.50%	59.01%
% Pfd. & Subord.Items:Total Capital	28.38%	39.63%	31.74%	39.50%	40.99%

(1) Data for years 1942-1944 taken from Preferred Stockholders Exhibit No. 29-A, p. 2103a. Data for 1945 and 1946 taken from Moody's Public Utilities Manual - 1947 Edition, p. 1297.

(2) Detail in Moody's as follows:

	1945	1946
Contract Payments	$ 81,812.	$ —
Bonded Debt	92,800,000.	92,000,000.
Notes Payable (Non-current)	3,900,000.	7,550,000.
	$ 96,781,812.	$99,550,000.

(3) Detail in Moody's as follows:

Preferred Stock	$42,447,100.	$42,447,100.
Premium on Stock	340,620.	340,620.
	$42,787,720.	$42,787,720.

APPENDIX F - TABLE 6

PRO FORMA CONSOLIDATED BALANCE SHEET
ENGINEERS PUBLIC SERVICE COMPANY, INC.
DECEMBER 31, 1947

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	Consolidated 12-31-46	Changes in Subsidiaries (1) Virginia Electric	Gulf States Utilities	El Paso Electric	Engineers ~~(2)~~	Pro Forma Consolidated 12-31-47
Subsidiary Debt and Notes	$99,550,000.	+$4,350,000.	-$200,000.	$ --	--	$103,700,000.
Subs.Pfd.Stock, Premium & Accrued Dividends	42,787,720.	--	+5,000,000.	--	--	47,787,720.
Minority Interests	78,021.	+ 3,286.(3)	--	--	--	81,307.
Total Prior Claims	$142,415,741.	+$4,353,236.	+$4,800,000.	--	--	$151,569,027
Subs.Common Stock	--	--	+ 3,410,650.(2)	--	$(-3,410,650.)	--
Engineers' Pfd.Stock	39,245,500.	--	--	--	--	39,245,500.
Engineers' Common "	1,909,968.	--	--	--	--	1,909,968.
Reserve for Investment Loss	2,000,000.	--	--	--	--	2,000,000.
Capital Surplus	20,637,665.	--	--	--	--	20,637,665.
Earned Surplus	35,145,042.	+1,639,753.(3)	+ 1,762,150.	+419,570.	$ 3,339,556. (4)	42,306,071.
Total Common and Surplus	$ 59,692,675.	+$1,639,753.	+ 5,172,800.	+ 419,570.	$ -71,094. (5)	$ 66,853,704.
Total Investment	$241,353,916.	+$5,993,039.	+$9,972,800.	+$419,570.	$ -71,094.	$257,668,231.
Book Value Equity Per Share						270.34
Net Quick Assets	$ 23,588,122.	- $7,554,426.	+$2,693,127.	- $410,294.	-$71,094. (5)	$ 18,245,535.
%Net Quick: Prior Obligations						12.03%
%Prior Obligations: Total Capital						58.43%
%Pfd. & Subord.Items: Total Capital						41.57%

(1) Changes based on balance sheet data contained in Moody's Public Utility Manual, 1948;
Gulf States Utilities, p. 821
Virginia Electric p.744-5
El Paso Electric p.285

(2) Represents proceeds from sale of subscription 272,852 shares of common stock at $12.50 per share, shown in Moody's as follows:

Common Stock - 1947	$11,592,587.
Less: Common Stock-1946	11,101,125.
	$ 491,462.
Capital Surplus for 1947 (Now in 1946)	2,919,188.
	$ 3,410,650.

(3) Computed as follows:

Earnings available to Common - V.E.P.Co. 1947	$ 5,324,075. (See Table 2,Appendix B)
Add: Misc.Surp. Credits	43,654.
	$ 5,367,729.
Deduct: Common Dividends	3,673,031.
Misc.Surp.Debts	51,659.
	$ 3,724,690.
Net Increase in Surplus V.E.P.Co. 1947	1,643,039.
Proportion to Minority Interest	0.02%
Amount Surplus Increase to Minority Interest	3,286.
Amount Surplus Increase to Engineers	$1,639,753.

(4) Represents retained cash income of Parent Company as shown in detail of pro forma consolidated income statement as of December 31, 1947. (See Table 2, Appendix B)

(5) Pro forma reduction in net quick assets on assumption that Parent Company would subscribe for entire increase in common equity of Gulf States Utilities, as follows:

Increase in Common Stock- Gulf States Utilities	$3,410,650.
Less: 1947 Retained Dividend and Interest Income of Parent Company	3,339,556.
Deficiency from working Capital	$ 71,094.

APPENDIX F - TABLE 6A

60

RECONSTRUCTED CORPORATE BALANCE SHEET
ENGINEERS PUBLIC SERVICE CORP., INC.
SUBSIDIARY COMMON STOCKS AND CONVERTIBLE DEBENTURES VALUED AT
AVERAGE MARKET PRICE - WEEK OF NOVEMBER 20, 1948
(BASED ON PARENT COMPANY BALANCE SHEET AT DECEMBER 31, 1946, AND
ADJUSTED FOR ESTIMATED CASH INCOME FROM DIVIDENDS AND OTHER SOURCES)

	High	Low	Av'g.	No. Shares	Value
Common Stocks (2)					
Virginia Electric and Power Co.	15-1/2	14-1/2	15	2,950,196	$44,252,940.
Gulf States Utilities Co.	17	16-1/4	16-5/8	2,182,820	36,289,383.
El Paso Electric Co.	25-1/2	23	24-1/4	381,994	9,263,355.
					$89,805,678.
V.E.P.Co. 3-1/8% Conv. Deb. 1963 at 107 (price as of 11/26/48)					12,576,566.
Net Quick Assets Not Invested (See Note)					7,223,513.
Total Reconstructed Assets					$109,605,757.
Less: Contracts and Tax Reserve (1)					24,670.
Reconstructed Net Assets Available for Preferred					$109,581,087.
Call Value Preferred Stocks (392,455 shs.)					42,450,295.
Balance to Common					$ 67,130,792.
Pro Forma Net Assets per Share Preferred at Market Values					$279.22

NOTE: Estimated Retained Cash Income of Parent Company

1947 Estimated (Appendix B - Table 2)		$3,339,556.
Twelve months ended 9/30/48 Estimated (Appendix C - Table 3)	$2,901,811.	
Adjustment to Estimate for 9 mo. period by 75%		2,176,358.
Estimated Retained Cash Income 9 mo. 1948		$5,515,914.
Add: Net Quick Assets 12/31/46 (1)		16,872,049.
Total Funds Available for Investment		$22,387,963.
Deduct: Subscriptions to Securities of Subsidiaries -		
Gulf States Utilities - 272,852 sh. at $12.50 per sh.		$3,410,650.
V.E.P.Co. - Conv. Deb. at 100		11,753,800.
Total Subscriptions		$15,164,450.
Estimated Net Quick Assets 9/30/48		$ 7,223,513.

(1) Data for "Net Quick Assets" and "Contracts and Tax Reserve" taken from Moody's Public Utility Manual 1947, p. 1298.

(2) Market Prices for Virginia and for Gulf States taken from Commercial and Financial Chronicle, Nov. 22, 1948. Market Prices for El Paso taken from Wall Street Journal, Nov. 15-19, 1948.

APPENDIX G - TABLE 7

EARNINGS AVAILABLE FOR COMMON
VIRGINIA ELECTRIC AND POWER COMPANY, GULF STATES UTILITIES CO. AND EL PASO ELECTRIC COMPANY - YEARS 1940 to 1947 AND TWELVE MONTHS ENDED SEPTEMBER 30, 1948.

Year	Virginia Electric and Power Co. (1)	Gulf States Utilities Company (2)	El Paso Electric Company (3)
1940	$ 3,954,352	$ 1,841,366	$ 417,256
1941	3,783,320	1,318,652	585,649
1942	3,199,710	1,118,203	438,871
1943	4,315,834	1,624,132	543,721
1944	4,756,785	1,645,361	605,823
1945	4,094,036	2,071,569	691,482
1946	5,038,066	2,933,352	859,894
1947	5,324,075	3,415,480	1,030,761
12 Mo. ended 9/30/48	4,062,427(4)	3,646,794	1,107,301
% Inc. 1947 over 1940	35%	85%	147%

(1) 1940-44: Preferred Stockholders Exhibit 29-A (R. 2115a)
1945-9/30/48: Prospectus dated 11/15/48, p. 9. (filed with S.E.C.)
Earnings are before giving effect to extraordinary reductions in taxes.

(2) 1940-43: Moody's Public Utility Manual, 1946, p. 917.
1944-48: Registration Statement filed with S.E.C. in January, 1949.
Earnings are before giving effect to extraordinary reductions in taxes.

(3) 1940: Moody's Public Utility Manual, 1946, p. 913.
1941-47: Moody's Public Utility Manual, 1948, p. 284.
1948: Moody's Public Utility Weekly Cumulative Index Vol. 20, No. 33, p. 1722-3.

(4) Based on information in company prospectus dated November 15, 1948, a calculation has been made on p. 43 supra, ~~a subsequent page in this section~~ showing that annual income available for common in the next year should be increased in the amount of $1,286,790.

APPENDIX H - TABLE 8

62

COMPARATIVE STUDY OF OPERATING REVENUES
VIRGINIA ELECTRIC AND POWER COMPANY, GULF STATES
UTILITIES COMPANY, AND EL PASO ELECTRIC COMPANY
1940 AND 1944 TO SEPTEMBER 1948

	1940	1944	1945	1946	1947	12 Mo. Ended 9/30/48	% Increase 1947 over 1940	% Increase 1947 over 1945	% Increase 12 Mo. Ended 9/30/48 over 1940	% Increase 12 Mo. Ended 9/30/48 over 1945
Virginia Electric and Power Co.(1)										
Residential and Rural	$ 9,740,473	$13,418,484	$14,032,103	$14,072,272	$16,149,736	$17,454,755	--	--	79%	24%
Commercial	7,163,762	11,737,683	13,388,376	13,275,701	13,929,728	14,844.420	--	--	107%	11%
Industrial	4,939,476	7,561,480	6,725,955	6,576,267	7,564,469	8,365,617	--	--	69%	24%
Other Sales	1,704,198	3,256,083	3,592,595	3,512,429	4,299,493	4,784,909	--	--	--	--
Other Electric Revenues	206,448	185,744	173,185	178,648	272,808	226,503	--	--	--	--
Total Sales	$23,754,357	$36,159,474	$37,912,214	$37,615,317	$42,216,234	$45,676,204	--	--	94%	20%
Gulf States Utilities Company (2)										
Residential and Rural	$ 3,106,397	$ 4,156,130	$ 4,429,623	$ 4,643,040	$ 5,386,330	$ 6,144,015	--	--	97%	39%
Commercial	2,288,661	3,032,527	3,341,770	3,799,602	4,622,932	5,358,028	--	--	34%	60%
Industrial	3,479,823	7,551,911	7,304,711	5,565,880	6,436,142	6,856,231	--	--	97%	-6%
Other Sales	865,857	745,771	812,811	849,837	917,168	1,171,369	--	--	--	--
Total Sales	$ 9,740,738	$15,484,339	$15,888,915	$14,858,359	$17,362,572	$19,529,643	--	--	100%	23%
El Paso Electric Company (3)										
Residential and Rural	$ 1,062,556	$ 1,319,747	$ 1,420,506	$ 1,421,337	$ 1,586,891	N.A. (4)	50%	12%	--	--
Commercial	897,017	1,009,531	1,095,516	1,234,869	1,420,072	N.A.	59%	30%	--	--
Industrial	596,514	876,268	851,955	820,682	1,104,350	N.A.	85%	30%	--	--
Other Sales	226,831	644,184	680,469	697,819	689,366	N.A.	--	--	--	--
Total Sales	$ 2,782,918	$ 3,849,729	$ 4,048,446	$ 4,174,706	$ 4,800,679	$ 5,268,555	--	--	89%	30%

(1) Virginia Electric and Power Co. - Prospectus dated November 15, 1948, p. 9
(Filed with S.E.C.)

(2) Gulf States Utilities Company - 1940: Moody's Public Utility Manual 1946, p. 916
1944-8: Registration Statement filed with S.E.C. in January 1949, p. 12

(3) El Paso Electric Company - 1940: Moody's Public Utility Manual 1946, p. 913
1944-7: Moody's Public Utility Manual 1948, p. 284
1948: Application to Federal Power Commission for Leave to Issue Notes, dated November 28, 1948, and filed Nov. 23, 1948, Exhibit I, p. 1. See also Moody's Public Utility Weekly Cumulative Index, November 13, 1948, pp. 1722-3.

(4) N. A. - Not available

APPENDIX I - TABLE 9

63

COMPARATIVE STUDY OF KILOWATT SALES TO CUSTOMERS, VIRGINIA ELECTRIC AND POWER CO., GULF STATES UTILITIES COMPANY, AND EL PASO ELECTRIC CO. 1940 AND 1944 TO SEPTEMBER 1948

	1940	1944	1945	1946	1947	12 mo. ended 9/30/48	%Increase 1947 over 1940	%Increase 1947 over 1945	%Increase 12 mo. ended 9/30/48 over 1940	%Increase 12 mo. ended 9/30/48 over 1945
Virginia Electric and Power Co. (000 Kwh)										
Residential and Rural	261,619	373,941	405,658	452,110	520,503	590,590	--	--	125%	45%
Commercial	231,072	542,470	636,337	581,324	594,634	643,829	--	--	179%	11%
Industrial	451,569	643,226	584,825	585,906	677,807	723,685	--	--	60%	23%
Other Sales	121,882	289,488	307,447	297,285	375,971	402,365	--	--	--	--
Total Sales	1,066,142	1,849,125	1,934,267	1,916,625	2,168,915	2,360,465	--	--	21%	22%
Gulf States Utilities Co. (000 kwh)										
Residential and Rural	75,702	111,202	120,987	138,351	162,634	188,001	--	--	147%	55%
Commercial	63,824	110,249	118,831	137,206	167,949	200,274	--	--	213%	69%
Industrial	536,914	1,149,755	1,104,713	859,540	1,036,448	1,110,337	--	--	107%	0
Other Sales	29,304	90,948	90,048	95,017	91,813	123,944	--	--	--	--
Total Sales	705,744	1,462,154	1,434,579	1,230,114	1,458,844	1,622,556	--	--	130%	13%
El Paso Electric Company (000kwh)										
Residential	31,667	42,267	45,476	51,886	58,456	N.A.	83%	38%	--	--
Commercial	27,661	33,614	36,911	44,017	54,166	--	93%	61%	--	--
Industrial	60,471	93,010	87,491	81,793	118,189	--	95%	27%	--	--
Other Sales	13,652	49,476	53,239	55,525	61,205	--	--	--	--	--
Total Sales	133,451	218,367	223,117	233,221	292,016	--	119%	33%	--	--

Sources of Data:

Virginia Electric and Power Co. - Prospectus dated Nov. 15, 19[illegible], p.10

Gulf States Utilities: 1940 - Moody's Public Utility Manual 1946 p. 916

1944-8 - Registration Statement filed with S.E.C. in January 1949, p. 12

El Paso Electric Co.: 1940 - Moody's Public Utility Manual 1946 - p. 913

1944-7 - Moody's Public Utility Manual 1948 p. 284

N. A. - Not available

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APPENDIX J - TABLE 10

COMPARATIVE STUDY OF NUMBER OF CUSTOMERS SERVED
~~ELECTRIC LIGHT AND POWER COMPANY,~~ VIRGINIA ELECTRIC
AND POWER COMPANY, GULF STATES UTILITIES COMPANY,
AND EL PASO ELECTRIC COMPANY
1940, AND 1944 TO SEPTEMBER 30, 1948

	1940	1944	1945	1946	1947	12 Mo. Ended 9/30/48	% 1947 ~~to~~ 1940	% 1947 ~~to~~ 1945	% Increase 12 Mo. Ended 9/30/48 over 1940	% Increase 12 Mo. Ended 9/30/48 over 1945
Virginia Electric and Power Company (1)										
Residential and Rural	240,007	295,491	303,606	319,201	344,054	363,047	--	--	51%	19%
Commercial	41,208	44,996	47,745	51,806	55,462	57,635	--	--	40%	20%
Industrial (4)	971	935	528	559	600	577	--	--	- 41%	9%
Other	1,898	2,337	2,572	2,999	3,288	3,533	--	--	--	--
Total	284,084	343,759	354,451	374,565	403,404	424,792	--	--	50%	20%
Gulf States Utilities Company (2)										
Residential and Rural	77,197	99,215	107,046	118,950	133,906	145,299	--	--	88%	35%
Commercial	14,275	15,576	17,070	19,969	22,338	23,929	--	--	68%	40%
Industrial	539	599	633	603	658	825	--	--	53%	30%
Other	121	131	153	161	186	197	--	--	--	--
Total	92,132	115,521	124,902	139,683	157,088	170,250	--	--	85%	36%
El Paso Electric Company (3)										
Residential and Rural	25,931	30,83[illegible]	32,238	34,638	35,454	N.A. (5)	36%	15%	--	--
Commercial	4,097	4,152	4,973	5,567	5,974	N.A.	45%	43%	--	--
Industrial	127	90	141	144	185	N.A.	45%	100%	--	--
Other	186	192	192	192	353	N.A.	--	--	--	--
Total	30,241	35,268	37,544	40,541	41,966	N.A.	38%	19%	--	--

(1) Virginia Electric and Power Co.: Prospectus dated Nov. 15, 1948 p. 9 (filed with S.E.C.)

(2) Gulf States Utilities Co.: 1940 - Moody's Public Utility Manual 1946, p. 91[illegible] -- 1944-8 - Registration Statement filed with S.E.C. in Jan. 1949, p. 12

(3) El Paso Electric Co.: 1940-Moody's Public Utility Manual 1946-p.913
1944-7 " " " " 1948-p.284

(4) Reflects reclassifications

(5) N.A. -- not available

APPENDIX K - TABLE 11 65

COMPARISON OF ACTUAL EARNINGS PERFORMANCE WITH ESTIMATED EARNINGS PERFORMANCE - ENGINEERS PUBLIC SERVICE CO., INC. AND FORMER SUBSIDIARIES (EARNINGS STATEMENTS FOR YEARS ENDED DECEMBER 31, 1946 AND 1947 AND PRO FORMA EARNINGS STATEMENT FOR TWELVE MONTHS ENDED SEPTEMBER 30, 1948, COMPARED TO ESTIMATED INCOME STATEMENT FOR YEAR ENDED DECEMBER 31, 1946)

	1946 Estimated(1)	1946 Actual(2)	1947 Pro Forma(3)	12 mo. ended 9/30/48 Pro Forma(4)
Operating Revenues	$57,374,800	$61,287,542	$69,367,465	$75,847,951
Operating Expenses				
Operating Expenses and Maintenance	28,101,000	--	37,159,756	43,405,664
Depreciation	4,850,000	--	5,283,832	5,798,162
Taxes - Other	5,166,518	--	5,631,610	6,286,948
Total	$38,117,518	$40,623,973	$48,075,198	$55,490,774
Operating Income	19,257,282	20,663,569	21,292,267	20,357,177
Add: Other Income	(-111,500)	(-38,798)	144,434	120,533
Balance	$19,145,782	$20,624,771	$21,436,701	$20,477,710
Deduct: Federal Income Taxes	5,700,386	6,194,756	6,050,584	5,652,001
Amortization of Plant Acq.Adj.	893,800	893,452	894,484	894,484
Miscellaneous Deductions	--	--	140,866	--
Available for Charges	$12,551,596	$13,536,563	$14,350,767	$13,931,225
Charges and Preferred Dividends	7,494,897(5)	7,327,784	7,151,891	7,670,204
Available to E.P.S.Common	$ 5,056,699	$ 6,208,779	$ 7,198,876	$ 6,261,021
Charges and Preferred Dividends Earned	1.67	1.85	2.01	1.81

(1) Engineers Exhibit No. 63, R. 1828-9a. Figures combined to conform to terminology shown in Tables 2 and 3, *supra*.

(2) See Table 1.

(3) See Table 2.

(4) See Table 3.

(5) Comprised of following:

Interest and Amortization	$3,322,200
Preferred Dividend Requirements of Sub.	2,043,500
Minority Interests	10,121
Preferred Dividend Requirements of Engineers	2,119,076
Total	$7,494,897